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In the Supreme Court

OF THE

United States

OCTOBER TERM 1981

THE F/V AMERICAN EAGLE, ADF&G No. 39, and $100,677.50 REPRESENTING THE PROCEEDS OF 143,825 lbs. of Alaska King Crab Delivered Pursuant To ADF&G Fish Ticket Nos. E95626 and E95627
Appellants,

VS.

STATE OF ALASKA,
Appellee.

On Appeal from the Supreme Court of the State of Alaska

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16 of the Rules of the Supreme Court, Appellee, the State of Alaska, respectfully moves that the appeal in this matter be dismissed on the grounds that it fails to present a substantial federal question meriting any further argument in this Court, or, in the alternative, that the decision of the Supreme Court for the State of Alaska be affirmed.

STATEMENT OF THE CASE

This case arises from an *in rem* forfeiture action brought by the State of Alaska against the F/V American Eagle, based on the vessel's commercial king crab fishing activities in the Egg Island District of Westward Shellfish Statistical Area O from January 2-7, 1976, almost two months after the district had been closed by emergency order of the Alaska Department of Fish and Game. This district is located in the Aleutian Islands and includes waters lying beyond the traditional three mile limit of state territorial seas.

On January 9 and 12, 1976, the vessel entered Kizhuyak Bay and Port Lions at Kodiak Island but departed without delivering crab. R. 354. The vessel eventually delivered its crab at Pelican, in Southeast Alaska, where proceeds from the sale in the amount of $100,677.50, and the vessel and gear were seized by State officials on January 16, 1976. On January 28 the State of Alaska filed a civil *in rem* forfeiture proceeding pursuant to AS16.05.190 and .195 seeking forfeiture of the vessel and its proceeds for the alleged fishing in closed waters. Discussions with the owner led to a negotiated release of the vessel and gear on February 10, 1976.

On December 1, 1977 the Alaska superior court entered findings of fact, after a five day trial in July 1977, that the F/V American Eagle was used in aid of violations of provisions of the Alaska Administrative Code by taking and possessing king crab within the Egg Island District during a closed season.

The superior court decision forfeited only the proceeds and a $350,000 bond posted in connection with the negotiated release. The State contended that the bond was not a stipulation for value that substituted for vessel forfeiture but, instead, was in the nature of a guarantee of delivery to Kodiak upon a judgment of forfeiture. The Alaska supreme court found that the stipulation was ambiguous, and substituted the bond for the vessel. The State does not further cross-appeal this determination.

Alaska has exercised management activity over king crab beyond three miles since the Bering Sea crab fishery developed in the late 1960's. In the absence of a Fishery Management Plan under the Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, the State continues enforcing conservation regulations beyond three miles.

ARGUMENT

THE ISSUES RAISED BY APPELLANTS ARE NOT SUBSTANTIAL FEDERAL QUESTIONS REQUIRING REVIEW

In this appeal, the vessel owners raise several arguments challenging the Alaska supreme court decision. These include a challenge to the State's regulation beyond three miles as violative of the commerce clause and of due process, an assertion that the regulation of crab beyond three miles is exclusively federal under the supremacy clause and federal statutes, a claim that the State's fishing regulations are impermissibly vague, and a challenge to the State's forfeiture law as violative of due process protections. All of these issues were carefully considered by the Alaska supreme court. Its decision is plainly correct, is in harmony with this Court's decision on these subjects, and the arguments advanced by Appellants are too insubstantial to merit further review.

1. ALASKA'S KING CRAB FISHING REGULATIONS COMPLY WITH THE COMMERCE CLAUSE

Appellants argue that Alaska's assertion of jurisdiction over king crab in waters beyond the three mile limit of the territorial sea is a *per se* violation of due process and the commerce clause. Jurisdictional Statement of Appellants at p. 7. This assertion ignores the well established, flexible judicial analysis applicable to extraterritorial state regulation of fisheries resources, which involves three elements:

(1) a legitimate local purpose;

(2) an evenhanded, nondiscriminatory effect on interstate commerce; and

(3) not being excessive in relation to the local benefits.

Hughes v. Oklahoma, 441 U.S. 322, 331 (1978), citing *Pike v. Bruce Church, Inc.,* 397 U.S. 137, 142 (1970). The State's regulation of king crab fishing in waters in the Egg Island District satisfies each of these commerce clause tests, as outlined below.

A. Legitimate Local Purpose

The state's king crab regulations serve the definite local purpose of "conserving and developing the fishery resources of the state" (A.S. 16.05.221(a)), "for the maximum benefit of its people" in accordance with the "sustained yield principle." Constitution of the State of Alaska, Article VIII, Sections 2 and 4.

Appellants dispute the local purpose of Alaska's regulation of king crab beyond three miles because a 1974 case involving Bering Sea king crab suggested, at the preliminary injunction stage, that there was not enough evidence before the court to establish a basis for jurisdiction. Two members of the three judge panel thought that "the percentage of king crab taken commercially within Alaska waters is very small in comparison to that taken in the

rest of the Bering Sea Shellfish Area." *Hjelle v. Brooks*, 377 F. Supp. 430, 441 (D. Alaska 1974). Appellants apparently believe that this interlocutory ruling applies to invalidate Alaska's exercise of fisheries jurisdiction in the Egg Island District south of the Aleutian chain. However, that view ignores the reasoning of the third judge's opinion in *Hjelle*,[1] fails to acknowledge a subsequent factual review of the many contacts between the State and the crab fishermen who fish beyond the territorial seas, as well as the highly migratory nature of the Alaska king crab, and the differences between the *Hjelle* facts and those of the instant appeal. *See State v. Bundrant*, 546 P.2d 530 (Alaska 1976), appeal dismissed *sub nom. Uri v. Alaska*, 429 U.S. 806 (1976).

Reliance on *Hjelle* is further misplaced because the same fishermen who had earlier been successful in *Hjelle* were subsequently unable to obtain a temporary restraining order against revised extraterritorial regulations adopted by the State in 1974. *Bundrant*, 546 P.2d at 534.

In *Bundrant*, the Alaska supreme court reviewed the Bering Sea king crab fishery and confirmed the following personal and resource contacts:

1. king crab have a substantial economic impact on Alaska (pp. 552, 557);
2. king crab depend on the territorial sea for nursery areas (p. 522);
3. extraterritorial fishing has a major effect on the stocks growing and developing in the territorial sea (p. 552);

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[1]The minority judge in *Hjelle* identified many contacts in that case: he pointed out the existence of the following substantial state consequences that already characterized the extraterritorial crab fishery:

1. effect on crab within territorial waters;
2. effect on local fishermen;
3. effect on shore processors. *Id.* at 445.

4. king crab migrate across, and exist both within and without the three mile limit (pp. 553-554);

5. significant fishable populations of king crab are found in the territorial waters (p. 533);

6. it is necessary to regulate crab when they travel beyond three miles to assure their maximum sustained yield within three miles (p. 554);

7. subsistence uses exist in the territorial sea (p. 554; *see also* 5AAC 02.500, .520);

8. contacts with Alaska by fishermen from other states include:

a. Alaska fishing licenses and vessel registrations,

b. activities in territorial sea area, and

c. use of Alaska facilities (p. 556)[2]; and

9. king crab play an important role in maintenance of other species of marine resources in the territorial sea (p. 557).

Fishing in the Egg Island District is characterized by an even closer association with the State's territorial sea because this area lacks the extensive shallow shelf involved in *Hjelle*, which extends more than 100 miles from shore, and which affords feeding grounds for the crab during their annual offshore migration. Appendix A. The narrower shelf in the Egg Island District favors fishing activities more closely associated with the territorial seas, rather than the more widely distributed fishing efforts involved in *Hjelle*.

Other nexi with the State result from the nature of crab fishing activities. In the fall of 1975 an intense, one week Egg Island District fishery was closed by Emergency

[2]Fishermen have Alaska commercial fishing licenses and vessel registrations. Jurisdictional Statement of Appellants at A-87, ¶ 4-5; AS 16.05.475, AS 16.05.480, AS 16.05.490, AS 16.05.510, AS 16.05.520, AS 16.05.530, AS 16.43.140, 5 AAC 39.120; they comply with reporting requirements and fish ticket forms (5 AAC 39.130(c)) and satisfy other essential contacts with the State.

Order No. 20 on November 7, 1975. Appendix B. The participants in that fishery could then move to other local areas and continue their fishing activities. Appendices C-E. Those movements involved further significant State contacts because at periodic intervals as short as 12 hours, the fishermen lifted crab pots to make deliveries of captured crab to Alaska ports. TR.579. These all represent significant local interests.

B. Nondiscriminatory Effect

Regulations governing fishing areas, times, gear types, sex and size of crab, harvest levels, reporting requirements, etc. (5 AAC 34.005-650), apply evenhandedly to all fishermen, resident and non-resident alike. Similarly, the crab, once harvested, freely enter the stream of interstate or foreign commerce without unequal or discriminatory treatment of any user group. Appellants can cite no evidence to the contrary.

C. Reasonable Impact

The great importance of the king crab fishery to the State's economy shows that the State's nondiscriminatory commercial fishing regulations are not excessive when compared to the need to conserve the king crab resource and protect it from unregulated, indiscriminate fishing. The significance of the fishing industry in Alaska has already been well established. See e.g. *Metlakatla Indian Community v. Egan*, 369 U.S. 45, 46 (1961); *Glenovich v. Noerenberg*, 346 F. Supp. 1286, 1288 (D. Alaska 1972); *Anderson v. Mullaney*, 191 F. Supp. 123, 127 (9th Cir. 1951) aff'd *Mullaney v. Anderson*, 342 U.S. 415 (1952); *Bundrant*, 546 P.2d at 541, citing *Hjelle*, 377 F. Supp. at 433, *Isakson v. Rickey*, 550 P.2d 359, 360 (Alaska 1976). Judicial recognition of the local importance of fisheries in these cases is consistent with this Court's classification of fishing as a "local activity". *Alaska v. Arctic Maid*, 366 U.S. 199, 204 (1961); *California v. Zook*, 336 U.S. 725 (1949).

Where, as here, all commerce clause tests are satisfied, the state's special interest in preserving its wildlife prevails unless a regulation directly conflicts with a federal statute. *Hughes v. Oklahoma*, 441 U.S. at 342 (dissent), citing *Douglas v. Seacoast Products, Inc.*, 431 U.S. 265, 284, 285 (1977), *Kleppe v. New Mexico*, 426 U.S. 529, 546 (1976), and *Toomer v. Witsell*, 334 U.S. 385, 402 (1948); *see also: Baldwin v. Montana Fish and Game Commission*, 436 U.S. 371, 385-386 (1978), *Defenders of Wildlife v. Andrus*, 627 F.2d 1238 (D.C. Cir. 1980). As pointed out in Section 2 below, no conflict with federal fishing plans exists in this case.

In summary, the State of Alaska can regulate the conduct of king crab fishermen beyond three miles in the Egg Island District because of the substantial nexi of the resource and the fishermen to the territorial sea and land areas.

D. Alaska May Apply Its Regulations to Non-Residents

Appellants conclude their first (commerce clause) argument with the contention that the Washington citizenship of the vessel owners excludes them from any obligation to comply with Alaskan commercial fishing laws. They rely on *Skiriotes v. Florida*, 313 U.S. 69 (1941), *People v. Weeren*, 163 Cal. Rptr. 255, 607 P.2d 1279 (Calif. 1980), *cert. denied* ..... U.S. ....., 66 L.Ed. 2d 45 (1980), and *Northwest Trollers Ass'n v. Moos*, 1568 P.2d 793 (Wash. 1977), for the proposition that a state can only regulate its *citizens* beyond three miles. This argument merits little attention. Though *Skiriotes* and its post-Fishery Conservation and Management Act[3] companions *Moos* and *Weeren* do involve violations by resident fishermen, neither has

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[3]The Fisheries Conservation and Management Act extended federal jurisdiction to 200 miles effective March 1, 1977. 16 U.S.C. 1801 *et seq.*

been so restrictively applied. For example, in *United States v. Sylvester*, 605 F.2d 474, 475-476 (9th Cir. 1979) the appeals court did not attach significance to citizenship when it approved extraterritorial enforcement of Alaska's hunting laws under the Lacy Act (16 U.S.C. § 667e, 668d, 701; 18 U.S.C. §§ 42-44, dealing with interstate shipment of animal parts taken in violation of state law.). The court agreed with the district judge that:

> "[A] State may reach beyond its borders under its police power, to regulate game and fish if those regulations have a sufficient nexus with the protection and preservation of wildlife within the State. *Silz v. Hesterberg*, 211 U.S. 31, 29 S.Ct. 10, 53 L.Ed. 75 (1908); *Bayside Fish Flour Co. v. Gentry*, 297 U.S. 422, 56 S.Ct. 513, 80 L.Ed. 772 (1936)." In addition, there must be "a sufficient relationship between the regulating State and the person whose conduct is regulated. *Skiriotes v. Florida*, 313 U.S. 69, [61 S.Ct. 924, 85 L.Ed. 1193.] (1941)."

In addition, *United States v. Thompson*, an unpublished opinion of the United States District Court for the District of Alaska, No. A-87-72 Civ., dated December 15, 1972 cited in *Bundrant*, 546 P.2d at 556, similarly transcended citizenship and applied polar bear regulations to non-residents as well as residents under the Lacy Act.

Appellants rely heavily upon *Moos* for their citizenship argument. However, that decision is not valid authority for restricting the application of extraterritorial fishing regulations to citizens. In *Moos*, Washington's extraterritorial fishing regulations were held invalid because Washington State had violated its own statute, RCW 75.40.050, by adopting "regulations governing the offshore fishery which are inconsistent with those of the states of Oregon and California." *Id.* at 795. The appellate court's gratuitous dicta regarding the trial court's comment that extraterri-

torial regulations cannot apply to non-residents was not a basis for the higher court's opinion.

In addition, *Moos* and *Weeren* were decided under the recent Fishery Conservation and Management Act which established another, simpler basis for jurisdiction. 16 U.S.C. § 1856 (a) allows extraterritorial application of state fisheries laws over "vessels registered under the laws of such State." Hereafter, a case by case evaluation of "citizenship" of owners or crew is unnecessary if the vessel jurisdictional test is satisfied.[4]

It is undisputed that the F/V American Eagle, the vessel against which this proceeding was brought, was registered under the laws of Alaska.[5] Further, the vessel's crew had other substantial contacts with Alaska in conducting their fishing operations. In addition, the crab that were the target of their operations were inextricably associated with waters both within and without the territorial sea of Alaska.

Appellants do not raise a substantial challenge to the State's management regime. Extraterritorial application of regulations for the Egg Island District was consistent with the commerce clause and all fisheries conservation laws in force in January 1976. It would also have been appropriate under the Fishery Conservation and Management Act. Moreover, the regulation of king crab beyond territorial seas is clearly not an area of exclusive federal law, as outlined below.

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[4]Appendix F evidences federal understanding of court decisions allowing extraterritorial state jurisdiction before and after the Fishery Conservation and Management Act. See especially pp. 1, 4 at ¶ (b), and 12 at ¶ iii.

[5]Theoretically, the citizenship of the vessels' owners in an *in rem* action should be irrelevant so long as the *res* has sufficient contacts; clearly that is the case here.

2. EXTRATERRITORIAL KING CRAB MANAGEMENT IS A PROPER EXERCISE OF STATE CONSERVATION RESPONSIBILITIES AND DOES NOT INVOLVE AN AREA OF EXCLUSIVE FEDERAL RESPONSIBILITY

Appellants argue that "federal jurisdiction over king crab is exclusive, and any state regulation is prohibited by the Supremacy Clause. . . ." Jurisdictional Statement of Appellants at p. 10. This interpretation is based on the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331-43. It is not well founded.

In its most recent decision under the OCSLA, this Court held that federal courts do not have exclusive jurisdiction over personal injury and indemnity actions arising under the Act. *Gulf Offshore Co. v. Mobil Oil Corp.*, ... U.S. ...., 49 U.S.L.W. 4920 (July 1, 1981). The Court reached this conclusion despite language in the Act which describes the Outer Continental Shelf as an area of "exclusive federal jurisdiction," 43 U.S.C. 1333(a)(1), and grants United States District Courts "original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the Outer Continental Shelf . . . ." 43 U.S.C. 1333(b). The Court noted that Congress rejected a suggestion by the Justice Department that the Federal Government should "have the exclusive control of lawmaking and law enforcement" on the Shelf. *Id.* ..... U.S. at ....., 49 U.S.L.W. at 4922, n. 9.

The OCSLA only preserves "the right of the United States to the natural resources of that portion of the subsoil and seabed lying seaward and outside [the territorial sea]." 43 U.S.C. § 1302. It does not address the superjacent water environment. Nevertheless, Appellants seek to include crab as natural resources of the seabed and subsoil because the OCSLA was initially introduced as an amendment to the Submerged Lands Act, and the latter covered fish and crab as well as oil, gas and minerals. Jurisdic-

tional Statement of Appellants at p. 12. However, the history of the legislation after the Submerged Lands Act and the OCSLA were severed and a review of pertinent judicial authority evidence no such intent.

A. The Outer Continental Shelf Lands Act Does Not Apply to King Crab

As noted by the Court in *Gulf Offshore Co.*, "[t]he legislative history confirms that the purpose of the OCSLA was to assert the exclusive jurisdiction and control of the Federal Government of the United States over the *seabed and subsoil* of the outer Continental Shelf, and to provide for the development of its vast *mineral resources.*" ..... U.S. at ....., 49 U.S.L.W. at 4921, n. 7, citing S. Rep. No. 411, 83rd Cong., 1st Sess. (1953) (emphasis added)[6]

Appellants rely primarily on statements by one senator as evidence of "exclusive federal control" (Jurisdictional Statement of Appellants at p. 13), but they omit citation to several of the same senator's comments that the exclusive federal control under the OCSLA does not apply to fisheries. Senator Cordon elaborated on the restrictive nature of federal authority under the OCSLA:

> . . . we are excepting from the operation of this act *all marine life above the land itself beneath the seas.*" S. Rep. No. 411, 83rd Cong., 1st Sess. (1953). (emphasis added)
>
> [I]t is the plain intent of this measure to leave navigation and fishing in the outer shelf areas exactly where they are now.
>
> • • •

[6]The Senate Report on the OCSL bill expresses Congress' concern only with oil, gas and minerals:

> The purpose of S.1901, as amended, is to assert the exclusive jurisdiction and control of the Federal Government of the United States over the *seabed and subsoil* of the outer Continental Shelf, and to provide for the development of its vast *mineral* resources." (emphasis added). S. Rep. No. 411, 83rd Cong., 1st Sess. (1953).

> There is a recognition from cover to cover, in the bill, of the Federal Government, but no change in the character of the waters nor with respect to fishing or navigation in them." 99 Cong. Rec. 6963-64 (1953).

Senator Douglas confirmed this narrow application of the OCSLA:

> We are not particularly interested in kelp, or shrimp or oysters, those are sideshows. The question is oil and gas. 99 Cong. Rec. 2868 (1953).

Even if the comments of one congressman could be used to determine the intent of the whole Congress,[7] the statements omitted by the Appellants from their Jurisdictional Statement overwhelmingly contradict the proposition that Congress intended to pre-empt the states from extraterritorial regulation of king crab.

The Act itself is also instructive and directs that it be interpreted "in such a manner that the character of the high seas of the waters above the outer Continental Shelf and the right to . . . fishing shall not be affected." 43 U.S.C. § 1332(b). In addition, the operative portions of the Act at 43 U.S.C. 1334 focus on leasing procedures which are appropriate only to oil, gas, and mineral extraction operations. For example, the terms "royalty oil and gas", "unitization", "pooling", "drilling agreements", "subsurface storage of oil or gas", etc. have no application to fishing activities for crab or other fisheries resources on the high seas. Similarly, amendments to the OCSLA have dealt only with oil and gas royalties, leasing procedures, and other matters that do not apply to fisheries resources. *See e.g.* Pub. L. No. 95-372; 92 Stat. 629 (1978).

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[7]Statements on the floor are not credible evidence of legislative intent. Sutherland, Statutory Construction, § 48.13 (Sands, 4th Ed. Rev.)

Scholarly commentary further confirms that the OSCLA does not apply to fisheries resources:

> One aspect of the Act that is quite noticeable today is that it contains no provisions indicating any real concern for or even awareness of values or uses other than *mineral ones,* and that it provides no procedure for the weighing of and determination of priorities among such values and uses. This is perhaps understandable in light of the history of the Act. There is abundant evidence that the primary, perhaps controlling purpose of the Act was to authorize and encourage the development of the vast reserves and highly potential prospects of *oil and gas* on the outer continental shelf. The Act itself states that the leasing power of the Secretary of the Interior was authorized "[i]n order to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the outer Continental Shelf." (emphasis added)

R. Krueger, *The Background of the Doctrine of the Continental Shelf and the Outer Continental Shelf Lands Act,* 10 Natural Resources J. 442, 469 (1970).

The OCSLA's application only to minerals has also been specifically noted in judicial opinion. *See e.g., Guess v. Read,* 290 F.2d 622 (5th Cir. 1961), cert. denied 368 U.S. 957 (1962); *Treasure Salvors v. Abandoned Sailing Vessel,* 408 F. Supp. 910 (D. Fla. 1976); *United States v. Alexander,* 602 F.2d 1228 (5th Cir. 1979).

That Congress intended "natural resources" to refer only to minerals in the OCSLA is further supported by the historical use of the term "natural resources of the subsoil and seabed." This first appeared in Presidential Proclamation No. 2667, September 28, 1945, "Policy of the United States With Respect to Natural Resources of the Subsoil and Seabed of the Continental Shelf," 1945 U.S. Code Cong. & Ad. News 1199-1200. 10 Fed. Reg. 12303; Depart-

ment of State Bulletin Vol. 13, 1945, p. 484. Appendix G. Appellants fail to reproduce the first three paragraphs of the proclamation on pp. A-144 through 146 of their Jurisdictional Statement, so they miss the fact that "natural resources of the subsoil and seabed" means "petroleum and other minerals." In addition, Appellants omit consideration of Presidential Proclamation 2668, September 28, 1945, "Policy of the United States With Respect to Coastal Fisheries in Certain Areas of the High Seas," 1945 U.S. Code Cong. & Ad. News 200-01, 10 Fed. Reg. 12304, Department of State Bulletin, Vol. 13, 1945, p. 486. Appendix H. This companion proclamation on fisheries would not have been necessary if the reference to "natural resources of the subsoil and seabed" was intended to include fisheries resources that lived above the subsoil or in the superjacent waters.

B. Other Statutes, Treaties and Case Law Evidence No Federal Exclusivity in Fisheries Beyond Three Miles

Subsequent treaties with foreign countries have continued to confirm the distinction between minerals and fisheries resources for jurisdictional purposes. In 1958 the United Nations Conference on the Law of the Sea in Geneva adopted the Convention on the Continental Shelf (15 U.S.T. 471; T.I.A.S. 5578 (1964))establishing rules for seabed resources development beyond national limits of the territorial sea. The Convention was ratified by the United States and applies beyond traditional "natural resources of the subsoil and seabed" because coverage is specifically extended to "living organisms belonging to sedentary species." Art. 4. This treatment was necessary because the companion fisheries treaty[8] did not provide for exclusive coastal state (nation) jurisdiction over fisheries resources. Therefore, the Continental Shelf treaty

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[8]Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted by the United Nations Conference on the Law of the Sea. 17 U.S.T. 138; T.I.A.S. 5969 (1966).

nations exercise coastal state jurisdiction over all living organisms that come into "constant physical contact with the seabed or subsoil." Art. 2, § 4.

Thus, the coverage of these two treaties is further evidence that the natural resources of the subsoil and seabed do not, unless specifically defined as in the Submerged Lands Act or the Fishing Convention, include living resources such as crab.

The oil and gas decisions of this Court on which Appellants rely for their assumption of exclusive federal jurisdiction never extend their coverage to living resources; further, the single circuit court case that did so only applied very narrowly to coral reefs, not to live king crab. That court, *United States v. Ray*, 423 F.2d 15, 19, 21 (5th Cir. 1970) adopted a district court finding that coral reefs "together with the organisms attached thereto, are 'natural resources' within the Outer Continental Shelf Lands Act, and the Geneva Convention on the Continental Shelf."

Even if the living coral organisms atop tons and tons of underlying coral skeletal deposits constitute a continental shelf resource, a coral reef that cannot move from place to place or undertake seasonal migrations across the three mile boundary of the territorial sea is wholly unlike a king crab that makes long migrations and even in juvenile pod formations never becomes a part of the sea floor but remains separate and distinct. Appendix I. Coral, on the contrary, live and die in the same reef location, and their skeletal remains persist permanently to become an established part of the seabed. If king crab remained stationary in one place during their life history, and if their carapaces (shells) did not decompose but, rather, accumulated over generations to contribute to some sort of king crab shell reef, then the *Ray* case and oil and gas cases might be worthy of consideration to determine if king crab are like mineral resources of the seabed and subsoil subject to exclusive federal jurisdiction. This is not, however, the case.

The Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, gives the final, unequivocal assurance that king crab are not "federal citizens" of the continental shelf excluded from state conservation regulation. It establishes federal fisheries authority in a Fishery Conservation Zone (FCZ) from 3-200 miles seaward of the baseline in the United States. However, the authority is not exclusive. In the FCZ, foreign fishing vessels may be regulated by the federal government, but absent federal regulations, state conservation laws may still apply to vessels registered under the laws of the coastal state. 16 U.S.C. § 1851(a). Appendix F.

If Congress had intended the OCSLA to establish exclusive federal jurisdiction over fishery resources, it is inconceivable that Congress would have ignored the OCSLA when it approved extraterritorial state management authority over vessels registered under the laws of the state in the Fishery Conservation and Management Act. Yet, the Fishery Conservation and Management Act deliberations include no suggestion that 25 years of federal control was being upset. To the contrary, federal authorities continue to acknowledge that, even at the present time, state regulations in the territorial sea and beyond are necessary for the conservation of king crab. *Bundrant*, 546 P.2d at 540; Appendix O.

State management will be replaced under the preemption doctrine of the supremacy clause only if there arises a conflict between state and federal fisheries regulations. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978); *Douglas v. Seacoast Products, Inc.*, 431 U.S. 165 (1977); *Skiriotes v. Florida*, 313 U.S. at 69; *Toomer*, 334 U.S. at 393; *Manchester v. Massachusetts*, 139 U.S. 240, 266 (1890); *Corsa v. Tawes*, 149 F. Supp. 771, 773 (D. Md. 1957), citing *Cooley v. Board of Wardens*, 53 U.S. 299 (1851); *F/V American Eagle v. State*, 620 P.2d 657, 662 at footnote

10 (Alaska 1980); *Weeren,* 155 Cal. Rptr. at 794; Appendix F. So far Tanner crab, but not king crab have been the subject of Federal regulations under the FCMA. 50 C.F.R. § 671.

Appellants' argument for federal exclusivity would create an untenable void in regulatory control of fisheries beyond three miles and invalidate all pending and past enforcement actions. Under their argument, fisheries beyond three miles would be an unregulated "no-man's land" wherein fishermen could roam without regard to conservation principles unless the federal government had affirmatively undertaken to regulate a particular fishery.

Such an absurd result was not even considered in the pre- and post-Fishery Conservation and Management Act fisheries cases cited earlier which based extraterritorial jurisdiction over fish on sufficiency of state contracts. *See, e.g., Skiriotes,* 313 U.S. at 69; *Bayside Fish Flour Co. v. Gentry,* 297 U.S. 422 (1936); *Hjelle,* 377 F. Supp. at 430; *Felton v. Hodges,* 374 F.2d 337 (5th Cir. 1967); *People v. Foretich,* 92 Cal. Rptr. 481 (Cal. 1970); *Weeren,* 163 Cal. Rptr. at 255; *Moos,* 568 P.2d at 793; *Gherra v. California Fish and Game Dept.,* unpublished 1973 opinion cited in *Bundrant,* 546 P.2d at 550.

In summary, the OCSLA does not consider fish and crab species to be "natural resources of the seabed and subsoil." Accordingly, their management is not an area of exclusive federal jurisdiction precluding all state conservation regulations even in the absence of federal management. Appellants have failed to draw any substantial question as to such an application of the OCSLA.

3. ALASKA'S COMMERCIAL KING CRAB REGULATIONS FOR FISHING IN THE EGG ISLAND DISTRICT GIVE ADEQUATE NOTICE OF PROHIBITED CONDUCT AND ARE NOT VAGUE

A. Introduction

Appellants make two vagueness arguments:

(1) Alaska's commercial king crab regulations give no notice of application beyond three miles;

(2) two lower court decisions found other king crab regulations void for vagueness.

These conclusions result from an incomplete reading of the regulations and misinterpretation of the lower court decisions. If Appellants read the regulations as a whole, without selectively highlighting isolated sections, their application to Appellants' activities becomes obvious. *See United States v. Alexander*, 602 F.2d 1228, 1231 (5th Cir. 1979); *LaBauve v. Louisiana Wildlife and Fisheries Commission*, 444 F.Supp. 1370, 1381 (D.La. 1978). Further, Appellants have overlooked the fact that the lower court cases they rely on all involved king crab regulations in shallow Bering Sea areas where, unlike the Egg Island District, no outer boundary had been specified. See Jurisdictional Statement of Appellants, Appendix H at A-103.

B. Alaska's Commercial King Crab Regulation for the Egg Island District Gave Adequate Notice That Fishing Was Prohibited In January, 1976

At the time of the F/V American Eagle violations, Alaska's king crab regulations had been redrafted to clarify the earlier, pre-*Hjelle* jurisdictional definition of "waters seaward of that officially designated as the territorial waters of Alaska," as discussed further below. 5 AAC 36.040; *Hjelle*, 377 F.Supp. at 433; *Bundrant*, 546 P.2d at 533. The new regulations reflected the State nexi with the offshore king crab resources, their purpose being to protect and maintain the king crab resources of the State in all parts of the regulated area. 5 AAC 34.005(c).

Nowhere is their application restricted to waters inside three miles. On the contrary, the seaward boundary of Statistical Area O is unambiguously defined as 800 fathoms (5 AAC 34.600) and the definition of the Egg Island District in 5 AAC 34.605(c) encompasses "all waters of statistical area O."

In accordance with Alaska Statute 16.05.920(a), commercial fishing activities in all areas are prohibited unless permitted by law or regulation. The fishing season in the Egg Island District had been opened at 12:00 noon on November 1, 1975 (5 AAC 34.610), but Emergency Order 20, issued under authority of AS 16.05.060, closed the district on November 7, 1975, nearly a full two months before the F/V American Eagle violations. Appendix B.

Nothing in the regulations nor the emergency order in this case confined their application to waters within the three mile limit. To the contrary, all applied to waters within and beyond three miles in the Egg Island District. *State v. Bundrant*, 546 P.2d at 551.

C. Appellants Erroneously Assume that the Vagueness Involved in the Bering Sea Cases Applies to the Egg Island District

The two Bering Sea cases cited by Appellants involved vagueness in regulatory language failing to define the outer limits of the Bering Sea. Jurisdictional Statement of Appellants at Appendices G and H. The questioned regulations for the Bering Sea fishery did not indicate the seaward extent of the fishing area, and the trial court judge feared they might "have no boundary except the shores of a foreign country bounding the opposite side of the Sea." Jurisdictional Statement of Appellants at Appendix G, p. A-103. The Egg Island District closure is not subject to any ambiguity because it only extended to waters within an outward boundary defined by the 800

fathom isobath. 5 AAC 34.605(c); 5 AAC 34.600. Consequently the lower court cases on the Bering Sea and a Fish and Game Commissioner's remark that the Bering Sea registration area had no precisely defined outer limit have no application to the Egg Island District. Appellants have, therefore, failed to raise a substantial challenge to the Egg Island regulations, and this Court should not invalidate the state's emergency orders terminating fishing in the Egg Island District on November 7, 1975. The Alaska court readily found that "the Emergency Orders issued by the state prior to the American Eagle's activities in the Egg Island district left little question that the entire district was closed to king crab fishing as of November 7, 1975." *F/V American Eagle*, 520 P.2d at 364.

4. ALASKA'S FORFEITURE PROCEDURES SATISFIED DUE PROCESS

A. Introduction

Appellants argue that the forfeiture of the bond that was stipulated for the release of the F/V American Eagle denies due process because:

1. the forfeiture statute does not specify *in rem* procedures or a post-seizure hearing;
2. the trial took place in Kodiak, Alaska 18 months after the seizure;
3. the owners were deprived of their vessel from January 15-February 10, 1976 and suffered "irreparable injury" because the proceeds from the five days of fishing in the Egg Island District were put in a trust account pending a final decision; and
4. the forfeiture affected the interests of two owners who were not aboard the vessel at the time of the seizure.

Each of these objections has been settled by previous decisions of this Court, and the cases cited by Appellants fail to support their assertion that the action against the F/V American Eagle and the $100,677.50 in proceeds of

king crab taken two months after a season closure constituted a denial of due process.

B. Necessity of a post-seizure hearing

Appellants do not deny that vessel seizures may omit pre-seizure notice in accordance with *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974), but they argue that a post-seizure opportunity to contest the seizure must be provided in the context of the forfeiture statute itself. Jurisdictional Statement of Appellants at p. 21. They reject the reasoning of the Alaska supreme court that Alaska Rule of Criminal Procedure 37(c) provides an "immediate and unqualified right to contest the state's . . . seizure" (*F/V American Eagle*, 620 P.2d at 667) because they erroneously conclude "Criminal Rule 37(c) expressly does not apply to a civil in rem proceeding". Jurisdictional Statement of Appellants at p. 22. However, Alaska's highest court, like this Court, has specified that "forfeitures, even when civil in form, are basically criminal in nature." *Boyd v. United States*, 116 U.S. 616 (1886); *F/V American Eagle*, 620 P.2d at 667, footnote 25; *Graybill v. State*, 545 P.2d 629, 631 (Alaska 1976), citations omitted. Therefore Criminal Rule 37 is a valid standard for release procedures.

The Alaska court found that the search and seizure warrant obtained under AS 16.05.190 and .195 on January 10, 1976 was based on valid, applicable criminal rules which provided an immediate procedure for testing the seizure. *F/V American Eagle*, 620 P.2d at 667. There is simply no merit to Appellants' contention that they had no opportunity to seek an immediate release. Indeed, as set out below, they intentionally declined to do so.

C. Delays

Appellants also argue that the 25 days that the vessel was detained and the postponement of trial for 18 months represent a denial of due process. However, those delays

were a result of Appellants' own negotiations and strategy in the litigation and were associated with immediate settlement and release discussions between the parties following the seizure. They deserve little consideration. *F/V American Eagle*, 620 P.2d at 667.

Settlement did not occur, and the State finally filed the complaint for forfeiture on January 27, 1976, even though the settlement stipulation agreed to by the parties at ¶ 8 indicates the parties' discussions initially contemplated a more timely, simultaneous filing of the complaint and a release document. *Id.* at 669, fn. 30. Throughout these discussions the parties sought only an out-of-court release agreement. At no point did Appellants take action, either under Criminal Rule 37(c) or in the context of the subsequent civil litigation, to obtain a court-ordered release. Instead, they worked on a stipulation for release that was signed on February 10, 1976. Their suggestion that the bond was obtained "on the State's own terms" (Brief of Appellants at p. 25)[9], is in error because the final stipulation for release of the vessel reflected only the owners' estimate of $350,000 (R.567), even though the State's estimate was $850,000 (R.575) and subsequent insurance papers showed a $1,300,000 value. R.667.

Even after release, Appellants continued delaying tactics. For example, although Rule 12 of the Alaska Rules of Civil Procedure requires an Answer within twenty days (i.e. February 16, 1976), Appellants wrote the Attorney General's Office on April 9, 1976 that "We expect to be filing an answer during the next few weeks. As you know, I will be out of state for most of the time during the next month." Appendix K. Their answer was finally filed on May 10, 1976.

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[9]Appellants also suggest that "vessel seizures are a common enforcement measure", but actually they are only called upon in the most egregious cases (R. at File No. 14, Brief of Appellees at p. 51), and have only numbered five king crab vessels since 1976. Appendix J.

On October 26, 1976, 22 days after this Court indicated it would not review extraterritorial jurisdiction over king crab which had been approved in *Bundrant*, the parties discussed a trial date. Appendices L and M. Trial was set for March 29, 1977 in Kodiak, Alaska. Appendix N.

At the last minute, Appellants filed a lengthy trial brief requesting dismissal on the basis of alleged regulatory defects. R.72-92. The State asked for a postponement of the impending trial to allow time to submit responses to these challenges and avoid inconvenience to witnesses. R.105-111. The trial judge agreed that these last-minute motions should not be hastily dealt with, and the trial was reset for July 22, 1977. TR.86-88.

Thus, Alaska's rules did provide for a prompt post-seizure hearing, and delays that postponed the trial date until July, 1977 are the sole result of Appellants' voluntary actions. This does not rise to a substantial due process question.

D. Post-Seizure Hearings

Appellants also argue that forfeiture statutes must include a special provision for hearings. However, the cases they cite for this proposition all involve administrative actions or situations where there has been no judicial supervision of the seizure. See Jurisdictional Statement of Appellants at p. 22. For example, *Barry v. Barchi*, 443 U.S. 55 (1979), relied on by Appellants at pp. 21 and 15, involves summary suspension of a horse racing license by an administrative agency which failed to provide for a prompt post-suspension hearing, and the respondent's license remained suspended pending final decision. No judicial monitoring or opportunity for immediate review of the agency action was provided, unlike the situation for the owners of the F/V American Eagle who had the opportunity for a post-seizure hearing and did not have their licenses suspended or revoked.

Further, the owners' complaint that their property should not have been the subject of release negotiations "for almost four weeks without hearing" because of its value to "the owner in earning a livelihood" is without merit because the fishing grounds were in any event closed to commercial king crab harvests during that period. See Appendix E. If the grounds had been open, Appellants probably would not have instigated the delays mentioned above, or have taken their vessel to Pelican, more than 800 miles from the Egg Island District and on the route to their home port in Seattle.

Appellants incidentally complain that Kodiak was inappropriate venue, though they did not argue this point on appeal to the Alaska supreme court. Brief of Appellants at 22. However, Alaska law provides for venue in "the judicial district in which the claim arose" (AS 22.10.030 (b)); Kodiak was appropriate because it is in the same judicial district as the Egg Island District and the F/V American Eagle had earlier entered Port Lions, only about 25 miles from Kodiak. In addition, Kodiak best served the "convenience of the parties and witnesses" (AS 22.10.030 (d)), who were located in Dutch Harbor, Kodiak, Anchorage, Juneau, Petersburg, Seattle, and Virginia. The American Eagle had no contacts with Pelican, where the boat was seized, except that it made its last delivery of the season there.

E. Interests of Innocent Owners

Appellants refer to the recent decision of the Alaska supreme court in *State v. Rice*, 626 P.2d 104 (Alaska 1981), to plead that two of the owners who were not on board when the violation occurred should not be subject to the penalty imposed on the vessel. Jurisdictional Statement of Appellants at 25. However, remission procedures only apply to an innocent owner who shows "not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done all that reasonably could be

expected to prevent the proscribed use of his property." *Id.* at 111 citing dicta in *Calero-Toledo*, 416 U.S. at 689.

Calero-Toledo clearly upholds forfeiture of the interests of third parties—including the owners of a vessel leased without knowledge it would be used for drug trafficking. *Calero-Toledo* suggests, in dicta, that an exception might be created for a truly innocent owner who did all that was reasonably possible to prevent illegal use of the property.

The two "innocent" owners of the F/V American Eagle simply do not qualify for this exception. The *Rice* court, 626 P.2d at 111, footnote 24, noted that these owners were active business partners. Therefore, unlike the financing institution in *Rice*, they can profit immensely when $100,677.50 of king crab are taken in five days from a closed area. If the Alaska supreme court had excluded fishing partners from the operation of the forfeiture, cross-leasing of vessels to ensure that no owner ever operates a vessel in which he has an interest would frustrate future forfeiture actions.

Part of Appellants' theory of innocence appears to be based on a significant oversight in their evaluation of the Alaska supreme court opinion on this point. They intimate that two owners were given special, harsh treatment because they had previously filed challenges to the State's king crab regulations in the Bering Sea. Jurisdictional Statement of Appellants at p. 24. Inexplicably, they ignore the court's comments that Hjelle and Hansen were not only experienced fishermen well aware of the operations of their vessels, but that Hjelle had also engaged in significant operations in the Egg Island District during the season. *F/V American Eagle*, 620 P.2d at 668, 672.

Such a situation as this, where the owners know and desire that a vessel be used in king crab operations, and stand to profit from the venture, is unlike remission cases

where the innocent owner of a vehicle has no idea that, for example, a car will be used to smuggle alcohol or drugs. *Lee v. Thornton*, 538 F.2d 27 (2d Cir. 1976). Remission might be applicable to owners Hjelle and Hansen if the forfeiture action had stemmed from illegal conduct not related to fishing, such as possession of drugs or other contraband material and they had not otherwise profited from use of the vessel.

Thus, owners Hjelle and Hansen were not mere innocent owners, and Appellants have failed to raise a substantial reason for this Court to reassess its decision in *Calero-Toledo*. Also, Appellants do not raise substantial due process issues.

F. Deprivation of Vessel and Proceeds Does Not Constitute Denial of Due Process

Appellants argue that temporary loss of the vessel from the time of seizure until a release agreement was reached between the parties also denies due process. However, due process is denied only when the interests of the owner exceed the state's interests. *Barry v. Barchi*, 443 U.S. at 63-66.

The need to detain vessels to insure that release will not frustrate the forfeiture litigation has most recently been reiterated in *Calero-Toledo*, and applied in the *F/V American Eagle*, 620 P.2d at 668. The owners' interests in retrieving the vessel, when king crab fishing was not even permitted after January 10th, is not persuasive to subordinate the State's need to assure that the F/V American Eagle will not continue to disregard Alaska's conservation laws closing fishing grounds to further harvest. No irreparable injury could attach during the negotiation period unless the owners assumed they could continue to sidestep Alaska's jurisdiction over king crab by ignoring Alaska's fishery conservation laws.

Similarly, the owners' agreement to place the $100,677.50 in proceeds from the seized crab in an interest-bearing account pending a final decision in the litigation does not deny any due process "right" to use the proceeds. Unlike the taxpayer's savings in *Commissioner v. Shapiro*, 424 U.S. 614 (1976) (Jurisdictional Statement of Appellants at 24), the proceeds in this case were the direct result of an illegal activity. In addition, the owners could hardly suffer irreparable injury when the $100,677.50 represented windfall profits they would not have received if they had followed Alaska's conservation laws.

Finally, there is no merit to Appellants' allegation that "Alaska routinely refuses to negotiate a bond or demands a bond at an unrealistic level, often twice the value of the vessel." Jurisdictional Statement of Appellants at p. 25. Only five vessel seizures have occurred since the 1975 season. Appendix J. No case can be cited where the State has denied a bond, settlement, or the opportunity for petition to the court under Criminal Rule 37.

In summary, the owners' negotiations for release of the vessel evidences their conscious decision not to call upon the more rapid release procedure of Criminal Rule 37(c), or to petition for release in the civil case before they presented the trial court with the stipulation for release and the agreement to hold the proceeds in an interest-bearing account, R. 567. Their election to deal directly with the State to achieve a stipulation instead of arguing in court hardly constitutes a denial of due process.

CONCLUSION

Appellants have failed to raise substantial federal questions meriting this Court's review because:

1. Extraterritorial jurisdiction over fishing resources and fishermen having sufficient contacts with the State is well established. It is not necessary for this Court to reiterate that the magic of "citizenship"

is not the only jurisdictional nexus that obligates fishermen to abide by applicable state conservation rules. Moreover, the State's regulations closing the Egg Island District adequately informed crab fishermen of their meaning.

2. It is well established that forfeiture actions are quasi-criminal in nature and this Court's review is not necessary to confirm the application of Alaska's Criminal Rule 37 to seizure warrants.

3. Finally, Appellants' arguments regarding due process deprivations are without merit; by virtue of their profit from the crabbing venture, the owners do not fit within the "innocent owner" dicta of *Calero-Toledo*. Delays and other procedural events were all brought about by Appellants themselves.

This appeal should be summarily dismissed, or if considered as a petition for certiorari, this Court should not exercise its review authority, because Appellants' arguments on appeal do not raise substantial questions as to the State's authority to enforce reasonable conservation laws beyond three miles. Alternatively, the decision of Alaska's supreme court should be affirmed.

Dated this 31st day of July, 1981.

Respectfully submitted,

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(Appendices follow)

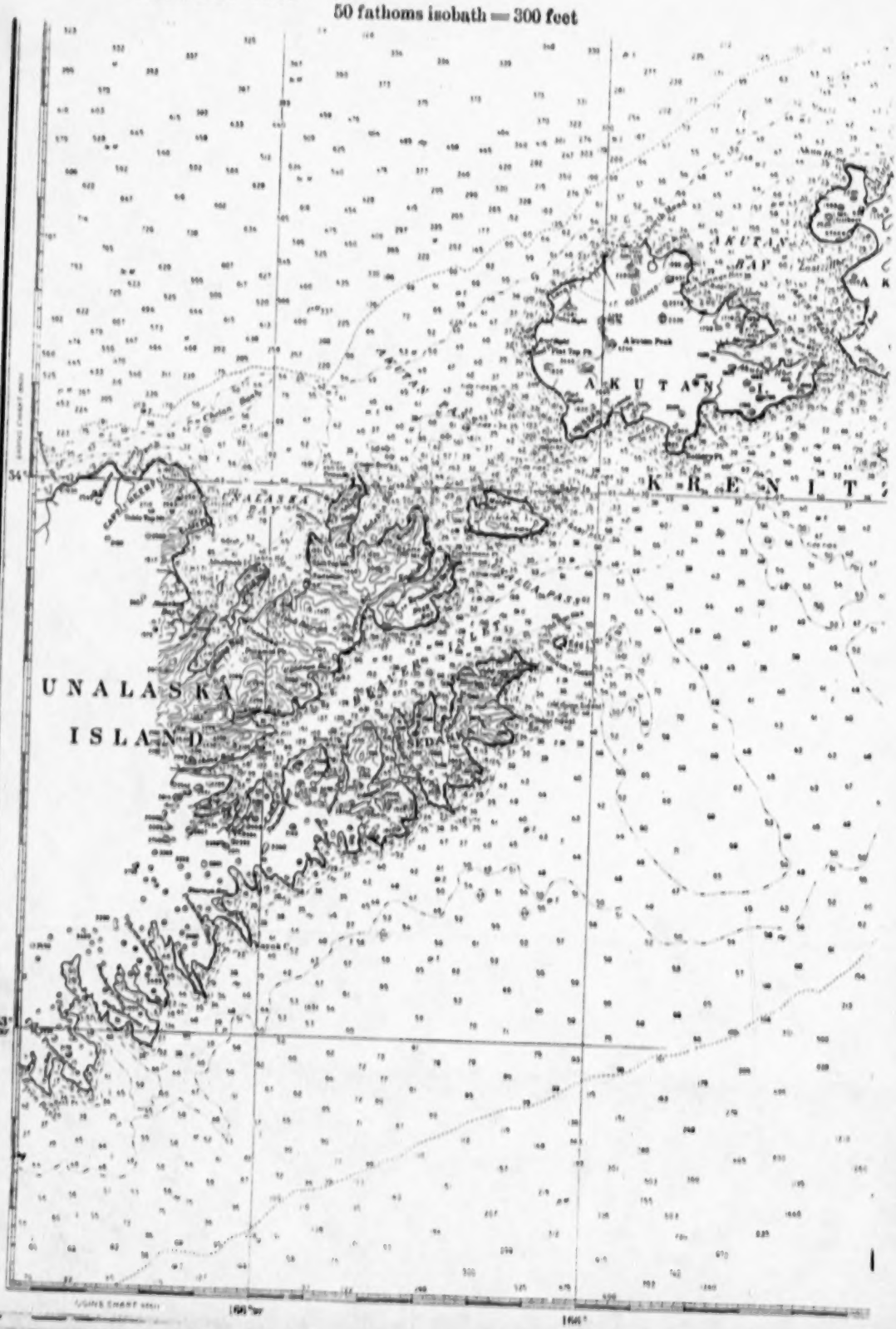
Appendix A

United States Coast and Geodetic Survey

CHART NO. 8860

Depth in fathoms

50 fathoms isobath = 300 feet



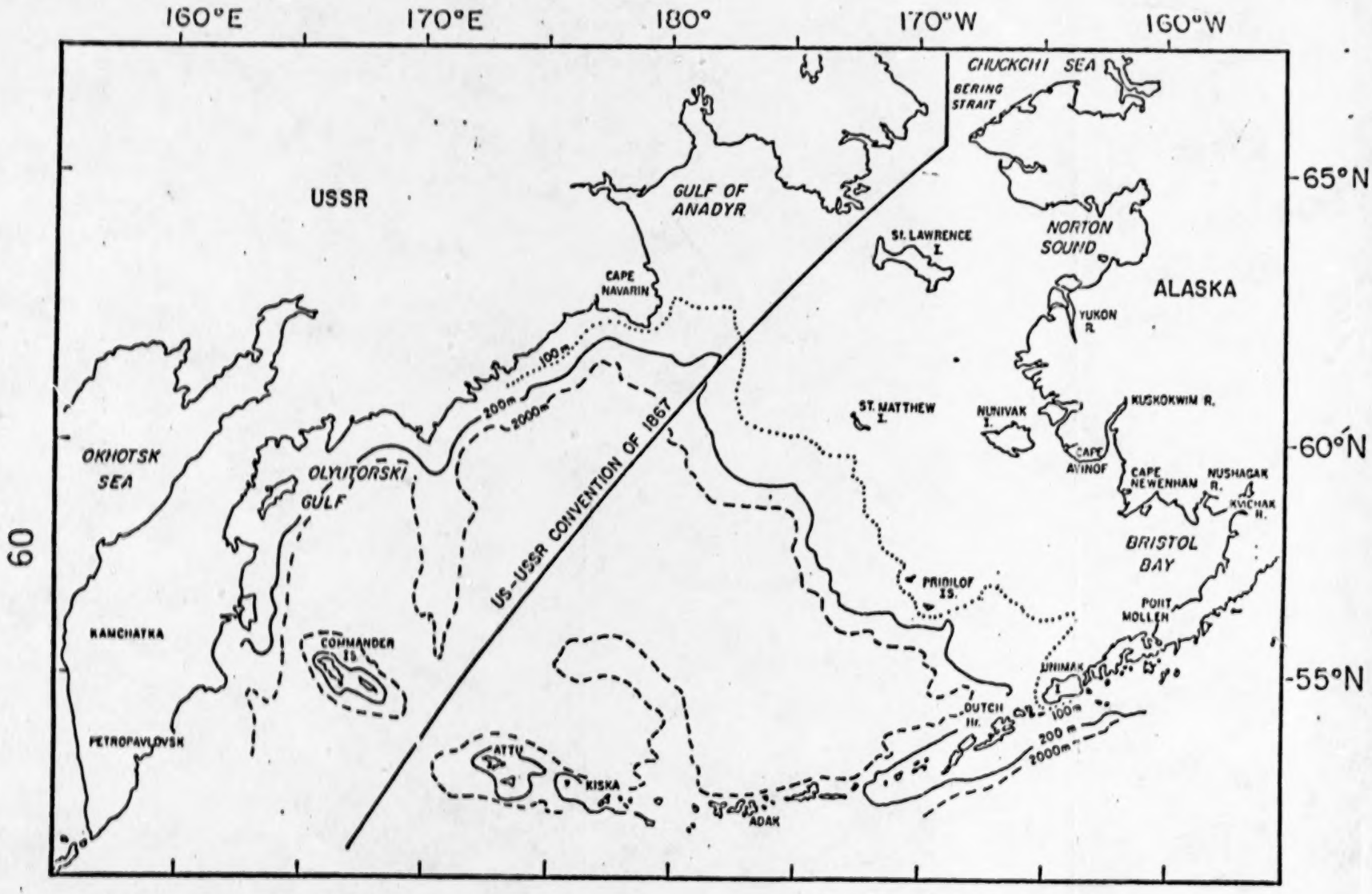


Figure 2.--Geographical locations in the eastern Bering Sea and Aleutian Islands.

Appendix B

State of Alaska
Department of Fish & Game
P.O. Box 686—Kodiak 99615
Division of Commercial Fisheries

November 4, 1975

Westward Region 1975 Shellfish Field
Emergency Order No. 20

JUSTIFICATION:

The present level of catch and rate of fishing success indicate that the desired king crab catch for the Egg Island district of statistical area O will be attained by 12:00 noon November 7.

The same analysis of data for the Bering Sea (statistical area Q) king crab fishery indicates that the desired harvest of red king crab will be attained by 12:00 noon November 14.

Therefore, the Egg Island district of area O will close to king crab fishing after 12:00 noon November 7 and the Bering Sea will close too fishing for red king crab after 12:00 noon November 14.

EMERGENCY ORDER:

Under authority of AS 16.05.060 the following emergency order is adopted effective November 4, 1975:

5 AAC 34.610. FISHING SEASONS. and 34.910. FISHING SEASONS. (b) shall be amended to read as follows:

5 AAC 34.610. FISHING SEASONS. King crab may be taken or possessed:

(a) from 12:00 noon November 1 until 12:00 noon November 7 in the Egg Island district,

(b) from 12:00 noon November 1 through February 15 unless closed earlier by emergency order in the remainder of statistical area O.

5 AAC 34.910. FISHING SEASONS.

(b) red and brown king crab may be taken or possessed from August 1 through 12:00 noon November 14.

ALASKA DEPARTMENT OF
FISH AND GAME
James W. Brooks, *Commissioner*

/s/ DUANE E. PHINNEY
By: Duane E. Phinney
Regional Shellfish Biologist
Westward Region

Appendix C

State of Alaska
Department of Fish & Game
P.O. Box 686—Kodiak 99615
Division of Commercial Fisheries

November 18, 1975

Westward Region 1975 Shellfish Field
Emergency Order No. 23

JUSTIFICATION:

Analysis of data from the Dutch Harbor king crab fishery indicate that the desired catch from the southwest portion of the Akun district of area O has been attained. Therefore, that portion of the district south of 54° 05′ N. lat. and west of 165° 05′ W. long. will close to king crab fishing after 12:00 noon November 20.

Severe weather continues to prevent fishermen from removing their gear from that portion of the Central district of area M that is scheduled to close. A 48-hour extension of the season is hereby granted.

EMERGENCY ORDER:

5 AAC 34.610. FISHING SEASONS. and 5 AAC 34.635. CLOSED WATERS. and 5 AAC 34.535. CLOSED WATERS. shall be amended to read as follows:

5 AAC 34.610. FISHING SEASONS. King crab may be taken or possessed from 12:00 noon November 1 through February 15 unless the registration area is closed earlier by emergency order.

5 AAC 34.635. CLOSED WATERS. King crab fishing is prohibited:

(a) after 12:00 noon November 7 in the Egg Island district,

(b) after 12:00 noon November 20 in that portion of the Akun district south of 54° 05′ N. lat. and west of 165° 05′ W. long.

5 AAC 34.535. CLOSED WATERS. King crab fishing is prohibited after 12:00 noon November 10 in those waters inside a line from Bold Cape to the northernmost point of Cherni Island to the southernmost point of Kennoys Island to Acheredin Point to the northernmost point of Andronica Island to the southernmost point of Karpa Island to Renshaw Point.

ALASKA DEPARTMENT OF FISH AND GAME
James W. Brooks, *Commissioner*

/s/ DUANE E. PHINNEY
By: Duane E. Phinney
Regional Shellfish Biologist
Westward Region

Appendix D

State of Alaska
Department of Fish & Game
P.O. Box 686—Kodiak 99615
Division of Commercial Fisheries

December 15, 1979

Westward Region 1975 Shellfish Field
Emergency Order No. 28

JUSTIFICATION:

The 1975-76 king crab season in the Westward Region has been a large overall success, with a total harvest of nearly 90,000,000 pounds. Record recent-years catches have been attained in some areas and districts and stocks are in good condition. The harvest levels have been attained in such areas and districts and the season closed.

Other areas, however, remain open with indications in most instances that the stocks are at less satisfactory levels. The present status of the king crab fisheries in these areas was evaluated and the decision has been made to close most of the areas after 12:00 noon December 18 for the remainder of the season. For example, the Adak area has shown a continued decline in crab abundance in recent years. Vessels fishing the area in November failed to find any sign of recovery; suggesting further decline. Removal of any significant number of crabs might reduce the population to such a low level that it could never recover. Therefore the general crab season at Adak will close after 12:00 noon December 18 and an alternate means will be devised to evaluate the crab population level. The Western Aleu-

tians area has always been managed in conjunction with the Adak area and the populations have reflected Adak in condition and the area will also close at 12:00 noon December 18.

The total catch for the Dutch Harbor Area is approaching the upper end of the anticipated harvest range. Three districts remain open. The Akutan district catch the past two seasons has fallen far below the catches taken in prior years and the harvest should be limited to allow recovery of the stocks to former levels of production. Extensive fishing in the Unalaska district has failed to discover any abundance of crab. The Western district has likewise failed to reach the expected level of production. The only crab that have been discovered in the latter two districts are large and no sub-legal males have been discovered. Thus, these older crabs are the only potential breeders and should be protected. The Western district has traditionally reached its peak in production later in the season and will remain open until 12:00 noon January 10. The Akutan and Unalaska districts will close at 12:00 noon December 18.

The normally productive portion of the Central district of area M was previously closed because of low abundance. Fishermen have failed to find any abundance of crab in that portion of the district still open. Extensive fishing in the Unimak Bight district has failed to find any significant abundance of crabs and the catch has lagged well behind expected levels in this previously productive area. The Cingnik district has likewise failed to produce any significant sign of crab. Therefore area M will close to king crab fishing after 12:00 noon December 18.

EMERGENCY ORDER:

Under authority of AS 16.05.060 the following emergency order is adopted effective December 14, 1975:

5 AAC 34.510. FISHING SEASONS. King crab may be taken or possessed from 12:00 noon August 15 until 12:00 noon December 18.

5 AAC 34.610. FISHING SEASONS. King crab may be taken or possessed from 12:00 noon November 1 until 12:00 noon January 10.

5 AAC 34.635. CLOSED WATERS.

(c) after 12:00 noon December 18 in the Akutan and Unalaska districts.

5 AAC 34.710. FISHING SEASONS. King crab may be taken or possessed from 12:00 noon November 1 until 12:00 noon December 18.

5 AAC 34.810. FISHING SEASONS. King crab may be taken or possessed from 12:00 noon November 1 until 12:00 noon December 18

ALASKA DEPARTMENT OF
FISH AND GAME
James W. Brooks, *Commissioner*

/s/ DUANE E. PHINNEY
By: Duane E. Phinney
Regional Shellfish Biologist
Westward Region

Appendix E

State of Alaska
Department of Fish & Game
P.O. Box 686—Kodiak 99615
Division of Commercial Fisheries

January 11, 1976

Westward Region 1975 Shellfish Field
Emergency Order No. 32

JUSTIFICATION:

Westward Region 1975 Shellfish Field Emergency Orders No. 1—31 were issued during the year to regulate the shellfish fisheries of the Westward Region. These remain in effect until rescinded. Some of these no longer are needed whereas others must remain in effect for a time. Therefore, the following emergency order is adopted effective January 11, 1976:

EMERGENCY ORDER:

Westward Region 1975 Shellfish Field Emergency Orders No. 1 through 6 (including 3A) and 8 through 29 (including 17A) are rescinded effective immediately and No. 30 and 31 are rescinded effective March 1, 1976.

ALASKA DEPARTMENT OF
FISH AND GAME
James W. Brooks, *Commissioner*

/s/ DUANE E. PHINNEY
By: Duane E. Phinney
Regional Shellfish Biologist
Westward Region

Appendix F

United States Department of Commerce
National Oceanic and Atmospheric Administration
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

January 29, 1981

To: F—Terry L. Leitzell

From: GCF—Jay S. Johnson

Subject: Supersession and Jurisdictional Operations Under § 306 of the Magnuson Act, 16 U.S.C. § 1856

QUESTIONS PRESENTED:

(1) Under what circumstances may federal fisheries regulations supersede State fisheries laws?

(2) To what extent may States regulate fishing in the fisheries conservation zone (FCZ) established under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 *et seq*?

CONCLUSIONS:

(1) Federal fisheries regulations will supersede State authority over fishing

(a) in the FCZ under the supremacy clause of the United States Constitution except as provided in (2), below, and

(b) in the territorial sea after an administrative finding that State action substantially and ad-

versely affects accomplishment of a fishery management plan (FMP) for a fishery predominately fished in the FCZ.

(2) A State may regulate the fishing of vessels in the FCZ only when:

(a) the vessel is "registered" under the laws of the same State; and

(b) such regulation is not inconsistent with any applicable federal regulation; and

(c) the State has a legitimate interest in the fishery; and

(d) the State regulation neither discriminates against citizens of other States nor unduly burdens the interstate commerce of the United States.

BACKGROUND:

In the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. §§ 1801 *et seq.*, the United States established exclusive jurisdiction over a fishery conservation zone (FCZ). The outward boundary of the FCZ is a line 200 nautical miles from the baseline of the United States; its inner boundary is a line coterminous with the seaward boundary of each Coastal State (normally three miles from the baseline). The waters between the Coastal State boundaries and the baseline (the territorial sea) are not part of the FCZ and therefore are not generally subject to federal fisheries management. The Act does, however, prohibit foreign vessels from fishing in the territorial

sea or internal waters of a State, 16 U.S.C. § 1857. "Fishing" as defined by the Act includes harvesting and support operations conducted "at sea". 16 U.S.C. § 1802(10). NOAA has previously determined that the operations of foreign support vessels within the internal waters of a State, as distinct from the territorial sea, are not subject to this restriction because such vessels are not at sea. [Letter William C. Brewer, Jr., General Counsel, NOAA, to Robert C. Ely, Esq., November 25, 1977.]

The Magnuson Act recognizes the importance of fishing both to the Coastal States and to the Nation. It leaves management in the territorial sea generally to the States and recognizes State interest in management of the FCZ by providing for State participation on regional fishery management councils. The Councils prepare fishery management plans (FMPs) that are approved and implemented by the Secretary of Commerce if they are consistent with national standards.

FMPs developed for the FCZ by the Councils with State participation are intended to address regional concerns affecting the citizens and resources of more than one State in a consistent manner. It is obvious that FMPs would be of little value if any State could regulate FCZ fishing in a manner contrary to that of the FMP.

The Magnuson Act provides at 16 U.S.C. § 1856 that:

> (a) Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction of authority or any State within its boundaries. No State may directly or indirectly regulate any fishing which is engaged in by any fishing

vessel outside its boundaries, unless such vessel is registered under the laws of each State.

(b) (1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that—

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominately within the fishery conservation zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

No federal litigation requiring application of § 1856 has yet arisen. Recent cases in three States, however, have

brought these provisions to the attention of State courts, *People v. Weeren*, 26 Cal.3d 654, (1980); *State v. Nelson*, No. C-2093, (Pacific County Super. Ct., Wash., April 29, 1980); *F/V American Eagle v. Alaska*, No. 2221 (Alaska S.Ct., November 21, 1980). While these cases have reached consistent results, there is still much uncertainty concerning the implications of § 1856 with respect to continued validity of traditional State fishery management regimes. Increasing public concern regarding the actual need for and costs associated with federal regulatory actions is also a factor, since to the extent that States having adequate fishery conservation and management regimes are not impaired by federal law or regulatory actions, the less will be the need for federal intervention. With these concerns in mind, several legislators, Councils, NOAA regional attorneys and the Alaska attorney-general's office have requested clarification of the constitutional principles and jurisdictional operations of § 1856. In response to these requests and in the light of judicial attention, this memorandum has been drafted.

1. State Fishery Jurisdiction

(a) Origins

Authority to regulate the use and development of natural resources is within the police power of the States. *See generally, Barbier v. Connolly*, 113 U.S. 27, 31 (1884). For the conservation of both public fishery rights and marine resources thereby exploited, such police power extends over fisheries within State boundaries and is equally enforceable against legal residents and nonresidents. *Smith v. Maryland*, 18 How. 71 (1855); *Manchester v. Massachusetts*, 139

U.S. 240 (1891). Such conservation power may not, however, be enforced within State boundaries so as to discriminate against citizens of other States, *Douglas v. Seacoast Products*, 431 U.S. 256 (1976), or for the special benefit of a State's own citizens. *Hughes v. Oklahoma*, 441 U.S. 322 (1979). Nor may the exercise of police power conflict with federal law or unduly burden interstate commerce. *Bayside Fish Flour v. Gentry*, 297 U.S. 422 (1936).

(b) Extraterritorial State Jurisdiction Before the Magnuson Act

Prior to the Magnuson Act, on the basis of legitimate governmental interests, Coastal States could exercise marine police power beyond their boundaries, indirectly by means of landing laws, or directly through laws applicable to State citizens and to non-citizens with sufficient contacts with the State to subject themselves to State jurisdiction.

(i) Landing Laws

State landing laws directly regulate the possession, sale, transport or other disposition of fishery resources within the State. Such laws indirectly control exploitation of such resources inside and beyond a State's territorial sea. In the leading landing law decision, *Bayside Fish, supra,* the United States Supreme Court upheld a California law which regulated the disposition of sardines landed within the State regardless of whether the fish were taken inside or beyond State waters. The Court found that the statute was directed primarily toward conservation of a local food source, which was a reasonable State interest. Moreover, the California law did not conflict with any federal law or unduly impede the flow of interstate commerce.

The extraterritorial impacts of a landing law can thus be justified on the ground of a Coastal State's conservation interest in the preservation of resources in the waters of its own territorial sea. In *Bayside Fish* the State action was held to provide "a shield against covert depletion" of State fishery resources and to prevent evasion of State regulations. Landing laws also enhance conservation of local migratory fish which move freely between the territorial and extraterritorial waters (the high seas). Conservation of such mobile resources often requires application of State laws to the adjacent waters in the absence of applicable federal regulations. *See United States v. Alaska*, 422 U.S. 184 (1975).

In order for a landing law to be sustained, an actual State conservation interest in the resource must exist. In *Hjelle v. Brooks*, 377 F. Supp. 430 (D. Alaska 1974), a State law regulating high seas crab harvesting was set aside on the ground that it did not facilitate conservation of the crab resource within State waters. The court ruled that even if such State action would enhance enforcement of local conservation laws, in the absence of a factual conservation relationship between the State and extraterritorial crab resources, enforcement alone was in insufficient nexus to support a landing law.

(ii) Extraterritorial Jurisdiction Over State Citizens

In the absence of conflciting federal law, a State may directly regulate the fishing activity of its citizens beyond the territorial sea. International law allows nations to govern the conduct of their citizens upon the high seas or even in foreign countries provided the rights of those foreign

countries or their nationals are not infringed. As between the nation and its citizen, the only issue is the legitimacy of the law establishing the citizen's duty to his own government. *See United States v. Bowman*, 260 U.S. 94 (1922). In *Skiriotes v. Florida*, 313 U.S. 69 (1941), the United States Supreme Court recognized an analogous extraterritorial State jurisdiction over its citizens.

Appellate Skiriotes had been convicted of using sponge fishing equipment prohibited by State law. On appeal, he contested Florida's claim that his actions occurred within its territorial sea. The Court rejected the appellant's contention, holding that even if the locus of the offense was beyond Florida's boundary, the State's authority over its citizens is not limited by its borders. The Court noted:

> If the United States may control the conduct of its citizens upon the high seas, we see no reason why the State of Florida may not likewise govern the conduct of its citizens upon the high seas with respect to matters in which the State has a legitimate interest and where there is no conflict with acts of Congress.

Skiriotes, 313 U.S. at 77.

In *Skiriotes*, Florida's interest in the sponge fishery was assumed. While it might be argued that the citizenship-based Skiriotes standard is distinct from the conservation-based rationale for landing laws in *Bayside Fish*, because the State's extraterritorial jurisdiction was grounded on the relationship between the regulated citizen and his government and not upon the relationship between the State and the exploited resource; nonetheless, a federal appellate court has held that extraterritorial fishery jurisdiction over

citizens must also involve a resource in which the State has a legitimate interest and concerning which there is no conflicting federal law. *Felton v. Hodges*, 374 F.2d 337 (5th Cir. 1967). This holding comports with the facts present in *Skiriotes*.

(iii) Extraterritorial Jurisdiction Over Non-citizens

In *State v. Bundrant*, 546 P.2d 530 (Alaska), *appeal dismissed sub nom. Uri v. Alaska*, 429 U.S. 806 (1976), several non-Alaskan defendants urged a *Skiriotes*-based argument to limit the State's extraterritorial jurisdiction to Alaska citizens only. The Alaska Supreme Court rejected this argument, citing, *inter alia*, *Jacobson v. Maryland Racing Comm.*, 274 A.2d 102 (Md. 1971), and affirmed the defendants' convictions under a "proper and logical extension of the state's police power" over nonresidents fishing on the high seas. The defendants had been licensed by Alaska and had stipulated to facts held by the court to establish their "daily use of Alaskan territorial waters and facilities." *Bundrant* at n.106. Such contacts with the State together with conduct having a potentially detrimental impact upon local marine resources were held to trigger non-citizen liability to Alaska regulation even without the defendants' actual fishing in State territorial waters of their violation of landing laws.

2. Federal Fisheries Authority

(a) The Marine Rights of the United States

In *United States v. California*, 332 U.S. 19 (1947), the Supreme Court of the United States ruled that the Federal Government and not the States has full dominion over the resources of the territorial sea. The United States was held

to own these resources as a consequence of its constitutional powers over interstate and foreign commerce and its responsibility for conducting relations with foreign governments under its treatymaking and war authority. *See id.* at 35; *see also United States v. Louisiana*, 363 U.S. 1 (1960). Concurrent exercise of State police power was permissible only when such action did not interfere with federal rights, unduly burden interstate commerce or conflict with federal law. *E.g., Toomer v. Witsell*, 334 U.S. 385 (1948).

In the Submerged Lands Act of 1953 (SLA), 43 U.S.C. §§ 1301-1315, Congress conferred political and proprietary title to the lands and resources of the territorial sea upon the Coastal States. This transfer of title was not, however, absolute; the United States retained rights to regulate and control the lands and resources of the territorial sea for "the constitutional purposes of commerce, navigation, national defense, and international affairs," and explicitly affirmed that these federal rights are *paramount* to those of the States. 43 U.S.C. § 1314. Hence, even after the SLA, a State could only give effect to its regulations where such action did not unduly interfere with the operation of federal law and where the State's legitimate interests or citizens were involved. *E.g., Felton v. Hodges*, 374 F.2d 337 (5th Cir. 1967). For example, a landing law could not be enforced if its effect would have been a thwarting of paramount federal high seas fishing policy. *Cf. Hjelle v. Brooks*, 377 F. Supp. 430 (D. Alaska 1974).

(b) Federal Supersession of State Law, Generally

Supreme Court decisions have established the standards for determining the superseding effect of federal law. *E.g.*,

Jones v. Rath Packing, 430 U.S. 519 (1977). The first inquiry is whether Congress pursuant to an enumerated constitutional power has prohibited State regulation of the particular matter or activity. *Id.* at 525. When the regulatory field is one traditionally occupied by the States, the concurrent exercise of State power is assumed to be maintained unless the scheme of regulation is so pervasive "as to make reasonable the inference that Congress left no room for the States to supplement it," or when the Act touches a field so dominated by the federal interest that "the federal system will be assumed to preclude enforcement of State laws of the same subject." *Ray. v. Atlantic Richfield Co. (ARCO)*, 435 U.S. 151, 157 (1978). Likewise, supersession is to be assumed when the object sought to be obtained and the character of obligations imposed by it reveal a congressional purpose of exclusive federal regulation. *Id.*

The Supreme Court has repeatedly held that where Congress has exercised exclusive jurisdiction over a general and inclusive area of activity, the very delegation of regulatory power to an administrative agency will supersede any State action. *E.g., Ray v. ARCO, supra; Bethlehem Steel v. New York State Labor Relations Board*, 330 U.S. 767 (1947). At times, when Congress has passed such superseding legislation but effective implementation must wait upon promulgation of regulations, the Supreme Court has allowed the exercise of State police power "in the interval." *E.g., Ray v. ARCO*, 435 U.S. at 172. Nonetheless, once there are "comprehensive regulations effectively governing the subject matter of the statute," State action in that field is superseded "even though that particular phase

of the subject has not been taken up by the federal agency"; agency failure to exercise affirmatively its full authority takes on the character of a ruling that no such regulation is appropriate. *Bethlehem Steel*, 330 U.S. at 774.

Furthermore, as comprehensive federal regulation invalidates concurrent State action, it also nullifies looser or stricter State regulations when uniformity of regulation is necessary. *E.g., Ray v. ARCO, supra; Jones v. Rath Packing, supra; Huron Portland Cement v. Detroit*, 362 U.S. 440 (1960).

Federal acts that do not exclude all State legislation in the same field nevertheless supersede conflicting State laws. U.S. Const., art. VI, cl.2; *Rath Packing*, 430 U.S. at 525-526. A conflict will be found where compliance with both federal and State regulations is "a physical impossibility," or where the State law "stands as an obstacle to the accomplishment and execution of the full purpose and objective of Congress, not only as it is written but even as it is interpreted and applied. *Ray v. ARCO*, 435 U.S. at 157; 430 U.S. at 526.

(c) State and Federal Jurisdiction under the Magnuson Act

(1) The Nature of the Act

In the Magnuson Act Congress exercised its commerce power to prohibit foreign fishing within the boundaries of any State and to establish a comprehensive national regime for federal regulation of specified fisheries resources in the FCZ. This scheme was premised on the conclusion that a national program for fisheries conservation and management was needed, § 1801(a)(6), and would operate under

exclusive federal authority in and beyond the FCZ, §§ 1801(b)(1) and 1812, subject to the reservation of State authority specified within the Act itself, § 1856.

The Act provides for preparation of FMPs which must be consistent with articulated national standards, § 1851(a); FMPs are to be prepared, and the national standards applied, by Councils through whose operations "the States, the fishing industry, consumer and environmental organizations, and other interested persons [are enabled] to participate in, and advise on" the formulation and effect of such FMPs. § 1801(b)(5). The voting membership of a Council must include: the chief official responsible for fishery management within each constituent State; persons appointed by the Secretary upon recommendation by the governor of each constituent State; and the regional director of the National Marine Fisheries Service for the geographical area concerned. § 1852(b) While the Magnuson Act details the various measures, assessments and provisions required for inclusion in FMPs, the Councils and the Secretary may also include the fishery regulations of adjacent States where appropriate and consistent with the national standards. § 1853(b). Each FMP is to be reviewed, approved, implemented and enforced consistent with the national standards by the Secretary.

Congress intended that the national standards would be applied in the FCZ on a regional basis, having rejected a policy for allowing imposition of various and potentially conflicting State regulations because it "would be unnecessarily confusing." Magnuson Act Leg. Hist. at 846-847 (statement of Rep. Leggett). In particular, the Act's goal of applying national standards under a federally regu-

lated regional regime is so dominant a federal interest that the character of the obligations it imposes on the Councils and the Secretary manifest a clear congressional purpose to preclude such impediments. *See Ray v. ARCO*, 435 U.S. at 164. Hence, § 1856(a), sentence 2, prohibits both direct (*e.g.*, citizenship) and indirect (landing law) State regulation of fishing in the FCZ with one exception. *See* ¶ 2(c)(ii)(b), *infra*.

(ii) The Character of Supersession under the Magnuson Act

(a) § 1856(a), sentence 1.

The first sentence of § 1856(a) provides:

> Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

This clause preserves for the Coastal States their traditional jurisdiction in the territorial sea, subject to the paramount rights of the Federal government under the United States Constitution. *E.g.*, the rights to regulate interest and foreign commerce reserved in the SLA § 1314. *Cf. First Iowa Hydro-Electric Coop v. FPC*, 328 U.S. 152 (1946). The prohibition of foreign fishing in the territorial sea is an exercise of these paramount rights. To domestic vessels, however, the clause limits the assertion of federal fisheries jurisdiction to the seas beyond the three-mile territorial waters. It does not, however, confer exclusive jurisdiction within the territorial sea upon any State. No State possessed such jurisdiction prior to the Magnuson Act, and § 1856(a) explicitly prohibits construction of its

provisions to extend State jurisdiction within its boundaries. Congress intended to retain for the States the political and proprietary rights conferred by the SLA subject to the reserved rights of the United States. *See* S. Rep. No. 94-416, 94th Cong., 1st Sess. *reprinted in* Magnuson Act Leg. Hist. at 659; *see also* Magnuson Act Leg. Hist. at 462 (statement of Sen. Magnuson).

A federal fishery statute silent as to its effect on State law could well supersede State laws regulating fishing in the territorial sea. The saving clause prevents this "natural course" supersession by limiting federal preemption of State regulation in the territorial sea to the procedure provided in § 1856(b). *See* ¶ 2(c)(ii)(c), *infra.*

(b) § 1856(a), sentence 2.

The second sentence of § 1856(a) provides:

> No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

This is a critical provision since it evidences the Congressional decision to assert federal jurisdiction in the FCZ without fully occupying the field and thereby preserves to the States the authority to regulate their own registered vessels. Of course, given the comprehensive nature of the Federal regime, if there were any actual conflict between federal and State regulations directly or indirectly affecting fishing in the FCZ, the federal regulations would prevail even as to State registered vessels. *Gibbons v. Ogden,* 22 U.S. (9 Wheat.) 1, 210 (1824), *Rath Packing, supra.* The Alaska Supreme Court, in *dicta,* has recently

acknowledged this result with respect to federal regulations promulgated under the Magnuson Act. *American Eagle, supra,* n.10.

Registration as used in § 1856(a) represents an alteration of prior law regarding the legitimate exercise of extraterritorial State jurisdiction under *Skiriotes, supra,* and *Bundrant, supra.* See ¶¶ (b)(i), (ii) and (iii). No longer may a State impose its fisheries laws in the absence of conflicting federal regulation in the FCZ based merely upon a showing of legitimate interests in the resources and the citizenship of the persons fishing or sufficient contacts between the State and noncitizens. The Magnuson Act now requires that the vessel whose fishing is to be subjected to State regulation must be "registered under the laws of such State."

(i) Registration

The actions constituting "registration" of a vessel, for the purposes of § 1856(a) are not stated within the Magnuson Act. However, courts in two Coastal States have held that licensing or other documentation of a vessel by a State will constitute such "registration." *People v. Weeren,* 26 Cal. 3d 654, 14 ERC 1250 (1980); *State v. Nelson,* No. C-2093 (Pacific County Super. Ct., Wash. Apr. 29, 1980) (*per curiam*).

In *Weeren,* the California Supreme Court noted that "registration" is a term of art under the federal documentation scheme applied only to ships engaged in international trade. Such vessels must be "licensed" if over five net tons, and both "licensed" and "enrolled" if weighing over twenty net tons. The "enrollment" denotes the national

character of the vessel, enabling it to obtain a license; the "license" limits the commercial use to which the vessel may be put. Possession of a federal license does not, however, supersede nondiscriminatory State regulation of a vessel's fishing activity. *Douglas v . Seacoast Products,* supra. Coastal States also issue other legal instruments to vessels in actions which constitute "a state license to use the boat for commercial fishing of a specified kind." *Weeren,* 26 Cal. 3d at , 14 ERC at 1255.

In the light of California's licensing procedure, the defendants' California citizenship, and the absence of federal regulation of the fishery involved in *Weeren,* the California Supreme Court held that § 1856(a) is intended to permit State regulation of fishing in the FCZ

> When not in conflict with federal law, when there exists a legitimate and demonstrable state interest served by the regulation, and when the fishing is from vessels which are [documentarily] regulated by it [*i.e.,* the State] and operated from ports under its authority.

Id., accord, Nelson, supra, American Eagle, supra.

(ii) The Scope of State Jurisdiction in the FCZ

The second sentence of § 1856(a) restricts the valid exercise of State police power over FCZ fishing to situations in which

(A) the State regulation is not inconsistent with any applicable federal fishery regulation: *i.e.,*

> (1) there are no federal regulations for the subject fishery; or

(2) compliance with both federal and State regulation is not impossible; or

(3) the State regulation does not impede the complete accomplishment of the goals of applicable federal regulations; and

(B) the vessel from which the fishing took place is "registered" under State law; and

(C) the State's legitimate interest in its territorial sea resources justifies the direct or indirect effect of its regulation of fishing in the FCZ; and

(D) the regulation neither discriminates against vessels from other States nor constitutes an undue burden on interstate commerce or any other federal right or authority.

(iii) Police Power in the Absence of Applicable Federal Regulation

The Magnuson Act is of the type of legislation requiring promulgation of regulations in order to effect its goals. *See* ¶2(b), *supra.* The California Supreme Court accurately noted that in the absence of federal regulations addressing the fishery involved in *Weeren, supra,*

> the exclusion of any such state regulation would create the danger of wholly unregulated exploitation of that species in coastal waters and on the high seas, thus resulting in the possibility of substantial or, indeed, total depletion of an important natural resource.

26 Cal. 3d at -...., 14 ERC at 1255. Such a result would be clearly inconsistent with congressional goals under the Act.

Hence, where they have a legitimate interest and prior to promulgation of applicable federal regulation for a particular fishery, States may regulate the fishing of vessels "registered" under its laws, directly, or indirectly according to the tenor of the State landing laws, provided there is no discrimination or undue burden on interstate commerce.

State regulation of fishing in the FCZ is limited to vessels "registered" in the same State. Regulations cannot be enforced against any persons who fish in the FCZ from a vessel not "registered" in the State seeking to regulate that vessel's activity. It is unlikely that a situation will arise in which a citizen of a State who fishes only in the FCZ from a vessel not "registered" in that State will operate from ports within that State or land therein. Nonetheless, should such a situation arise, the State's landing laws would not be enforceable against such a person, because such laws constitute indirect regulation of FCZ fishing prohibited by § 1856(a), second sentence. Corrective or preventive action regarding such a situation is available through incorporation of a State's landing laws or activity restrictions into the applicable FMP by the Council concerned or by amending the State's vessel registration laws to require such vessels to secure State "registration." In this regard, State citizenship plus use of State ports would seem to be a sufficient Constitutional nexus to support a registration requirement. *Cf. Weeren, supra.*

(iv) State Jurisdiction When Federal Regulations Have Been Promulgated

The *Weeren, Nelson* and *American Eagle* courts are in accord that promulgation of federal regulations regarding any fishery will supersede any *conflicting* State regulation of FCZ fishing. *E.g., Weeren*, 26 Cal. 3d at ...., 14 ERC at 1255; *American Eagle* at n.10. This supersession is automatic under the supremacy clause, U.S. Const., art VI, cl.2, and does not require the secretarial findings necessary under § 1856(b) for federal regulation within a State's territorial sea.

(c) §1856(b)

This section denotes the single exception to the first sentence of § 1856(a), and provides:

(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that —

(A) the fishing in a fishery, which is covered by a fishery management plan under this Act, is engaged in predominantly within the fishery conservation zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall terminate such regulation.

While federal jurisdiction is exclusive in the FCZ as to non-registered vessels and supersedes any conflicting State regulation of registered vessels, the Coastal States retain concurrent jurisdiction within the territorial sea. SLA § 1314. The Magnuson Act § 1856(b) provides the Secretary with a remedy when he finds that a State's action or inaction has a substantial adverse effect on the accomplishment of an FMP covering a fishery predominately fished in and beyond the FCZ. Secretarial action under § 1856(b) provides for assertion of the paramount right of the United States reserved by SLA § 1314 to regulate the resources of the territorial sea. The Secretary may not regulate a territorial sea fishery if the resource is not predominately fished in the FCZ. Nor may federal regulation replace State police power in the territorial sea in the absence of a promulgated applicable FMP and a procedural finding of substantial and adverse effects upon the carrying out of the same FMP.

Congress intended to so limit preemption of the States' authority as retained by § 1856(a) "that such preemption will be the unusual, rather than the usual practice." H.R. Rep. No. 94-542, 94th Cong., 1st Sess., *reprinted in* Magnuson Act Leg. Hist. at 1126. Hence, a formal administra-

tive procedure is required in order for secretarial regulation of fishing in a State's territorial waters. Congressional concern to maintain the States' territorial rights is further indicated by granting the Secretary power merely to suspend State laws until the Secretary finds that the reasons for which federal authority was assumed in State waters "no longer prevail," and by allowing the concerned State to initiate the reinstatement inquiry.

The circumstances and procedure required by § 1856(b) only limit federal preemption of State authority in the territorial sea when such preemption is made pursuant to federal regulations promulgated under the Magnuson Act. Nothing in the Magnuson Act has amended the SLA § 1314 reservation of paramount federal rights in the territorial sea.

IMPLICATIONS:

The Magnuson Act and regulations promulgated thereunder can have profound effects on existing State fishery conservation and management efforts. These effects can be positive or negative, intended or unintended. Certain unavoidable effects may be ameliorated by changes in State law to conform more closely to federal regulations. Both the Councils and the State fishery agencies need to understand the basics of federal legal supremacy to ensure that federal fisheries regulations are not unduly disruptive or counterproductive of ongoing State management efforts.

With respect to federal supremacy, the Magnuson Act has both immediate and potential effects. Upon enactment, the Act superseded State authority to allow foreign fishing

and support vessels from conducting operations in the territorial sea and precluded foreign vessels from harvesting in any State's internal waters. Upon enactment, the Magnuson Act also imposed an additional registration requirement upon the exercise of direct or indirect State authority over fishing operations in the FCZ, and thus deprived the States of regulatory authority over vessels which either were not or could not be registered under State law. Changes may be necessary in some State laws to exercise fully the preserved State authority over all vessels that could be registered.

A Council's decision to prepare an FMP under the Magnuson Act carries with it a potential for interference with ongoing State management efforts. As indicated in the body of the text, a properly promulgated federal regulation will supersede conflicting State regulation—direct or indirect—of FCZ fishing. Moreover, divergence of federal regulations for the FCZ from those of adjacent States applicable to the territorial sea will complicate the compliance efforts of each jurisdiction by adding an additional element of proof to an enforcement action. For example, if a particular size of fish may be taken legally in the FCZ pursuant to federal regulations, but the same size fish is illegal if taken in the territorial sea, it will be necessary for the State to prove where the fish was taken to sustain a prosecution of its law. If the federal size limit were smaller than a State size limit, the federal enforcement officers would have to be able to prove that the fish was taken in the FCZ. If, on the other hand, the size limits were identical in both the FCZ and the territorial sea, the

compliance efforts of both the States and the federal government would be simplified.

For these reasons the Councils should be urged to proceed cautiously in developing FMPs which, when promulgated with federal regulations, may complicate ongoing State management efforts. Existing State laws should be examined closely first to determine if a federal FMP is even required, and second to determine which State laws should be incorporated within the FMP itself to avoid the inconsistency problem. To be sure, there will be some situations in which Councils will reject the approach taken by one or more adjacent States and will want to impose different regulations for the FCZ. In such situations uniformity between the FCZ and the territorial sea may be preserved by State action to conform the territorial sea management regime to that of the FMP. In extreme cases, where inconsistent State actions substantially and adversely affect the carrying out of an FMP for a fishery located predominantly in the FCZ, such uniformity can be obtained by Secretarial action pursuant to § 1856(b).

Appendix G

Presidential Proclamation 2667, September 28, 1945, with Respect to Natural Resources of the Subsoil and Sea Bed of the Continental Shelf

10 Federal Register 12303 (1945)

WHEREAS the Government of the United States of America, aware of the long range world-wide need for new sources of petroleum and other minerals, holds the view that efforts to discover and make available new supplies of these resources should be encouraged; and

WHEREAS its competent experts are of the opinion that such resources underlie many parts of the continental shelf off the coasts of the United States of America, and that with modern technological progress their utilization is already practicable or will become so at an early date; and

WHEREAS recognized jurisdiction over these resources is required in the interest of their conservation and prudent utilization when and as development is undertaken; and

WHEREAS it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilize or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protec-

tion compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilization of these resources:

Now, Therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another state, or is shared with an adjacent state, the boundary shall be determined by the United States and the state concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected.

Appendix H

Presidential Proclamation 2668, September 28, 1945, With Respect to Coastal Fisheries in Certain Areas of the High Seas

10 Federal Register 12304 (1945)

WHEREAS for some years the Government of the United States of America has viewed with concern the inadequacy of present arrangements for the protection and perpetuation of the fishery resources contiguous to its coasts, and in view of the potentially disturbing effect of this situation, has carefully studied the possibility of improving the jurisdictional basis for conservation measures and international cooperation in this field; and

WHEREAS such fishery resources have a special importance to coastal communities as a source of livelihood and to the nation as a food and industrial resource; and

WHEREAS the progressive development of new methods and techniques contributes to intensified fishing over wide sea areas and in certain cases seriously threatens fisheries with depletion; and

WHEREAS there is an urgent need to protect coastal fishery resources from destructive exploitation, having due regard to conditions peculiar to each region and situation and to the special rights and equities of the coastal state and of any other state which may have established a legitimate interest therein;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the follow-

ing policy of the United States of America with respect to coastal fisheries in certain areas of the high seas:

In view of the pressing need for conservation and protection of fishery resources, the Government of the United States regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coasts of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale. Where such activities have been or shall hereafter be developed and maintained by its nationals alone, the United States regards it as proper to establish explicitly bounded conservation zones in which fishing activities shall be subject to the regulation and control of the United States. Where such activities have been or shall hereafter be legitimately developed and maintained jointly by nationals of the United States and nationals of other states, explicitly bounded conservation zones may be established under agreements between the United States and such other states; and all fishing activities in such zones shall be subject to regulation and control as provided in such agreements. The right of any state to establish conservation zones off its shores in accordance with the above principles is conceded, provided that corresponding recognition is given to any fishing interests of nationals of the United States which may exist in such areas. The character as high seas of the areas in which such conservation zones are established and the right to their free and unimpeded navigation are in no way thus affected.

Appendix I

University of Alaska
A Publication of the Alaska Sea Grant College Program
Volume 9, Number 3—June-September 1981

ALASKA Seas and Coasts
A Newsletter for the Alaska Commercial Fishing Industry

NEARSHORE MOVEMENT OF KING CRAB

by Stephen C. Jewett
Institute of Marin Science
University of Alaska
Fairbanks, Alaska

and

Guy C. Powell
Fisheries Biologist
Alaska Department of Fish and Game
Kodiak, Alaska

King crab have provided the foundation for the astonishingly rapid development of Alaska's high-seas fishing fleet. It is apparent from recent efforts to develop a large scale fishery for bottomfish that, due to the small unit value of bottomfish, these large high-seas vessels are going to be dependent, for at least part of the year, upon the valuable king crab resource to assure financial success.

With the movement for full development of Alaska's offshore petroleum resources, the shallow water behavior of the king crab for a portion of its life makes the species and

the fishery particularly vulnerable to any catastrophic mishaps. It has been demonstrated in the laboratory that 72-hour exposure of larval king crab to concentrations of water-soluble oil fractions as low as 0.8 or 0.9 parts per million permanently inhibited molting, and subsequently caused death.

In view of the king crab's commercial significance to the fishing industry, and its vulnerability to mishaps associated with oil development, Stephen Jewett of the U of A Institute of Marine Science and Guy Powell of the Alaska Department of Fish and Game have developed the following short article and pictorial selection to familiarize more people with the peculiar shallow-water behavior of the king crab. For the last 23 years Mr. Powell has made thousands of underwater observations of the behavior of king crab, and in 1977 Mr. Jewett joined him in that work.

King crab (Paralithodes camtschatica) migrate to shallow waters to release larvae, molt, mate, and spawn during March through June and then gradually migrate back to deeper water. Sexes of adult king crab are normally segregated, but from March through June the sexes are found together.

These shallow-water processes take place in the offshore environment, but to a lesser extent. Once in shallow water and prior to molting and mating each egg-bearing female releases 25,000 to 400,000 planktonic larvae into the water column. The larvae progress through five stages in approximately three months before they assume adult form on the ocean bottom.

After the larvae hatch, the females molt and mate. Molting and mating crab are observed in 15 to 90 feet of water in areas where kelp is common. Adult males molt prior to arriving on the mating ground and therefore arrive in the hard-shell condition. Females can mate only in the soft-shell condition immediately after molting. Adult females preparing to mate are believed to gain the attention of the males by emitting a chemical attractant before molting.

Male king crab grasp females at the base of both claws while facing them. This "precopulatory embrace" lasts anywhere from one to 16 days. After the female molts, the male crab releases the cast shell, reclasps her, and proceeds to spread spermatophore bands (sperm) around her gonopores (genital openings). The male then releases her and she begins to lay her eggs, depositing them beneath her "tail" (abdomen). She will hold and incubate the eggs until they hatch the next spring. Under experimental conditions males have been reported to mate with as many as 14 females.

When king crab are about one year old they emerge from rock crevices, kelp patches, and other protective niches where they have been living since settling from planktonic larvae a year before. No larger than a 25-cent piece, they wander slowly and aimlessly along the rocky bottom joining together with other crab their size. One small group joins another forming increasingly larger and larger groups. As these groups climb one upon another, characteristic ball-shaped pods are formed. Eventually the pods may grow to be 12 feet long and consist of thousands of individuals.

Podding in king crab is equivalent to herds, flocks, or schools in other animals and is believed to provide protection against predators. Pods are found year round and are made up of both males and females of similar size. They seem to disband either to feed or to change location.

Crab three years and older are too large for most fishes to feed on and probably do not form pods. Subadult and adult aggregations that have been observed are different from juvenile pods. Males sometimes form scattered circular piles two crab deep in the center. They do this as they migrate to shallower water to mate. In early spring, scattered aggregates of 2,000 to 6,000 premolt females are common. Adults will pile higher when an object such as a commercial king crab pot provides a wall which they can gather against.

The diet of king crab at various depths around Kodiak Island includes polychaete worms, clams, cockles, snails, barnacles, crabs, and sea stars. Approximately ten species of soft-shell clams are important prey to king crab in shallow water near Kodiak.

In early May 1978, large concentrations of king crab were located in Near Island Basin near the Kodiak city boat harbor. The crab were first sighted from a skiff just below the exposed low intertidal region. Some crab were actually exposed above water. Subsequent scuba diving revealed several hundred crab down to depths of 30 feet. All were intensely feeding on barnacles and clams, as well as sea urchins and sea stars.

On a dive made in June 1978 on the northern end of Kodiak, in Anton Larsen Bay, we encountered king crab intensely feeding on barnacles. The dive began on a steep

slope at 60 feet. While ascending up the slope toward shore, it was apparent that barnacles had recently been removed from the rocky substrate. King crab were subsequently observed at 27 feet continuing to move up the slope removing barnacles.

It is postulated that abundant food resources are necessary to replenish the recently expended energy of molting and mating activities and that soft-shell clams and barnacles of the Kodiak coastal region serve as an excellent source.

Adult king crab have been observed to eat the large sunflower sea star *Pycnopodia helianthoides*. This sea star is often as large or larger than the king crab which feeds upon it. Many *Pycnopodia* observed by scuba divers were tightly squeezed into rock crevices when king crab were in the vicinity. This behavior is assumed to be an avoidance response.

Species like the king crab which disperse larvae and feed in shallow, nearshore regions are especially vulnerable to petroleum contamination. Molting was permanently inhibited by exposing the larvae for 72 hours to oil at a concentration of 0.8 and 0.9 parts per million in the laboratory. Although high concentrations of oil killed the larvae in 96 hours, lower concentrations disrupted swimming and molting in the same period and also ultimately resulted in death.

In view of the king crab's commercial significance and the importance of Kodiak Island's nearshore environment to this crab, special attention should be focussed on the increased petroleum exploration and development that might be disruptive to the existence of king crab.

THE KING CRAB IN ALASKA

Alaska Department of Fish and Game
Wildlife Notebook Series

KING CRABS (*Paralithodes camtschatica*) are the objects of intense fisheries in the northern Pacific Ocean and Bering Sea by the United States, Japan and the Soviet Union.

King crabs are not true crabs, such as the Dungeness crab of the Pacific Coast, but are more closely related to hermit crabs. However, biologically they are more sophisticated than hermit crabs. Fleshy abdomens of king crabs are compressed under their bodies and are covered by a series of protective plates. The abdomen of the female is fan-shaped and functions as a brood chamber for fertilized eggs.

The legs of king crabs are jointed to fold behind the body instead of being jointed forward as are the legs of true crabs. The legs and carapace are spiney, which provides protection from predaceous fishes.

King crabs may grow as large as 24 pound in 15 years but commercially caught males average about seven pounds and are 8 or 9 years old. Crabs of this size measure about three feet with legs extended.

LIFE HISTORY: Female king crabs carry an average of 240,000 fertilized eggs in their brood pouches for nearly a year before they hatch. The freed larvae are planktonic for 40-60 days and drift with the tides and prevailing ocean currents. Larvae settle to the ocean bottom after their fourth molt when they develop a calcareous

exoskeleton. At this stage of their life, they lose their ability to swim or leave the ocean bottom. Immature crabs form "pods" by piling on each other in a form of defensive behavior. Individual pods may consist of as many as several thousand crabs.

King crabs reach maturity at 4 and 5 years of age and about four inches in length and width of shell. Females molt annually following maturity. Molting occurs in the presence of a male and mating immediately follows. Eggs are extruded into the brood pouch where embryonic development occurs.

Young adult males generally molt annually but frequency of molt decreases with age until it appears that molting occurs on alternate years for individual crabs.

King crabs display an annual migration pattern. In late winter they move from the outer continental shelf to water depths of less than 40 fathoms where females molt and are mated. These grounds may be along shore or on submerged offshore banks. Crabs move to deeper water following mating and feed throughout the summer, fall and early winter months.

Distribution: King crabs are located in the eastern Bering Sea and along the entire Pacific coast of Alaska including the Aleutian Islands. Major Alaskan fisheries for these crabs are centered at lower Cook Inlet, Kodiak Island, Unimak Pass area, Adak and Atka and the eastern Bering Sea north of the Alaska Peninsula. Minor fisheries exist in Southeastern Alaska and among the Shumagin Islands.

Commercial Fishery: Crabs are caught with baited pots which are six or seven feet square, three feet high and weigh 500 to 700 pounds each. Vessels may fish 50 to 100 such pots. Pots are baited with chopped herring which is usually replaced every two or three days.

Crab vessels vary greatly in size. Boats 40 feet in length may fish in bays adjacent to processing plants while vessels from 75 to 175 feet long fish open ocean grounds.

The Alaska king crab fishery was pioneered in the early 1950s. Annual catches have varied quite dramatically. A peak catch of 159 million pounds was obtained in 1966. This may be about twice the annual yield to be expected over the long run.

King crabs are generally processed by cooking for 20 minutes in boiling water and cooling quickly in salt water. Crab legs may also be partially cooked, then split and broiled for a gourmet's delight.

John C. McMullen
Reprinted 1978

Appendix J

Memorandum
State of Alaska

To: John Gissberg
Assistant Attorney General
Attorney Generals Office
Anchorage

From: Sgt. Robert Brown
Community Relations
Fish & Wildlife Protection
Anchorage

Date: July 22, 1981

File No.

Telephone No.

Subject: Vessel Seizure

Since January 1976, our records indicate that five king crab vessels have been seized as a result of violating Alaska's commercial fishing regulations. During this same period of time, the actual number of king crab permits being fished were 3,685, as indicated by the Limited Entry Commission.

Appendix K

Law Offices of
Faulkner, Banfield, Doogan & Holmes
Suite 201, 311 Franklin Street
Juneau, Alaska 99801

April 9, 1976

Gerald W. Markham
Assistant Attorney General
Department of Law
360 "K" Street, Suite 105
Anchorage, Alaska 99501

Re: American Eagle

Dear Jerry:

I talked with Doug Fryer about the American Eagle. As you know, he is trying to meet with crew members now that we have received the materials you sent us.

We expect to be filing an answer during the next few weeks. As you know, I will be out of the state for most of the time during the next month.

Very truly yours,

/s/
William B. Rozell

WBR:js

cc: Douglas M. Fryer, Esq.

Appendix L

October 26, 1976

William B. Rozell, Esq.
Faulkner, Banfield, Doogan & Holmes
311 Franklin St., Suite 201
Juneau, Alaska 99811

Re: *State v. F/V American Eagle*

Dear Mr. Rozell:

As you know Jerry Markham has begun a private law practice in Kodiak. However the State has retained him to continue his participation in the captioned case and I will be working with him as we prepare for trial.

I have sent Mr. Fryer the mortgage of vessel to be recorded in Seattle by the custom house brokers. This appears to be one of the last procedural matters relating to the bond in this file. However, our records still do not reflect the current hull insurance policy and I would appreciate a copy of that document.

In order to confirm your prior receipt of evidence now available to us I am enclosing copies of all our file materials relating to the State's evidence. This includes statements by eye witnesses as well as certain statistical analyses.

We would like to move that this trial be set for the week of March 7, 1977; this advance warning should allow our witnesses to arrange their plans so as to be available for the hearing. If this is satisfactory to you, I would appre-

ciate your confirmation so that I may contact the calendar clerk.

Thank you very much for your cooperation.

Very truly yours,
AVRUM M. GROSS
ATTORNEY GENERAL

/s/ JOHN G. GISSBERG
Assistant Attorney General

Appendix M

[Letterhead]

Law Offices
Moriarty, Long, Mikkelborg & Broz
3300 Seattle-First National Bank Building
Seattle, Washington 98154
(206) 623-5890

November 10, 1976

John G. Gissberg
Asst. Attorney General
State of Alaska
360 K Street, Suite 105
Anchorage, AK 99501

Re: State v. F/V AMERICAN EAGLE

Dear Mr. Gissberg:

This will confirm our telephone conversation in which we agreed that the above-captioned matter may be tried on March 28, 1977. We further explored the possibility of a change of venue, but have made no agreement in that regard and it will be our responsibility to file an appropriate motion.

Very truly yours,

/s/ DOUGLAS M. FRYER
Douglas M. Fryer

Appendix N

In the Trial Courts for the State of Alaska
Third Judicial District
Kodiak, Alaska

STATE OF ALASKA,
Plaintiff

vs

THE F/V AMERICAN EAGLE, etc.,
Defendant

Case No. 76-16023

Calendaring Order

This Case Is:

Assigned to Judge Roy H. Madsen in Kodiak, Alaska

Ordered for trial on Tuesday, March 29, 1977, at 9:00 A.M.
[XXX] Jury [ ] Non Jury IN KODIAK

[ ] Pre-Trial Conference .....

.....

[ ] Other .....

.....

Dated this 17th day of November, 1976.

By Order of a Superior Court
Judge

/s/ ROY H. MADSEN

Roy H. Madsen

I certify that on 11/17/76
a copy of the above was mailed
to each of the above counsel
and/or individual at their
addresses of record.

C. Glynn

Calendar Clerk

Appendix O

[Letterhead]

North Pacific Fishery Management Council
Mailing Address: P.O. Box 3136DT
Anchorage, Alaska 99510
Telephone: (907) 274-4563
FTS 265-5435

To Whom it May Concern:

I am the Executive Director of the North Pacific Fishery Management Council. Part of my responsibilities include maintaining records for the Council in the Anchorage office.

The attached document captioned "King Crab Motion #1" is filed in our records and was adopted by the Council at the May 1981 meeting.

Dated this 17th day of July 1981 at Anchorage, Alaska.

/s/ JIM H. BRANSON

Jim H. Branson
Executive Director

Signature notarized before me:
July 17, 1981

/s/ JUDY WILLOUGHBY

Judy Willoughby
My commission expires Sept. 25, 1983

KING CRAB MOTION #1

I move:

(1) that the Council adopt the Joint Statement of Principles on the Management of Domestic King Crab Fisheries from the Bering Sea and Aleutians by the Alaska Board of Fisheries as revised March 26, 1981;

(2) that the Council approve the Alaska Board of Fisheries Bering Sea/Aleutian Island King Crab Fishery Management Framework, dated April 1, 1981;

(3) that the Council find, on the basis of the commitment of the Alaska Board of Fisheries to adhere to the Statement of Principles and Framework mentioned above, that the 1981 king crab fishery in the Bering Sea and Aleutian Islands area does not require conservation and management other than that provided by the State of Alaska.

During this period of time the State will continue management and enforcement of the king crab fishery.

Appendix P

Constitutional Provisions, Statutes, Rules and Regulations

Constitutional Provisions

Constitution of the State of Alaska, Article VIII, Section 2

ARTICLE VIII

NATURAL RESOURCES

SECTION 2. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Constitution of the State of Alaska, Article VIII, Section 4

SECTION 4. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Federal Statutes

Fishery Conservation and Management Act of 1976 (16 U.S.C. § 1801-82)

§ 1801. Findings, purposes and policy

(a) Findings.—The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn

in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishing management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

(b) Purposes.—It is therefore declared to be the purposes of the Congress in this chapter—

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and

(6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska.

(c) Policy.—It is further declared to be the policy of the Congress in this chapter—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all

purposes other than the conservation and management of fishery resources, as provided for in this chapter;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this chapter;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this chapter; and

(5) to support and encourage continued active United States efforts to obtain an internationally acceptable treaty, at the Third United Nations Conference on the Law of the Sea, which provides for effective conservation and management of fishery resources.

16 U.S.C. § 1856. State Jurisdiction

(a) In general.—Except as provided in subsection (b) of this section, nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

(b) Exception.—(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of Title 5, that—

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this chapter, is engaged in predominately within the fishery conservation zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

43 U.S.C. § 1302. Resources seaward of the Continental Shelf

Nothing in this chapter shall be deemed to affect in any wise the rights of the United States to the natural resources of that portion of the subsoil and seabed of the

Continental Shelf lying seaward and outside of the area of lands beneath navigable waters, as defined in section 1301 of this title, all of which natural resources appertain to the United States, and the jurisdiction and control of which by the United States is confirmed.

43 U.S.C. § 1331. Definitions

When used in this subchapter—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

(b) The term "Secretary" means the Secretary of the Interior;

(c) The term "mineral lease" means any form of authorization for the exploration for, or development or removal of deposits of, oil, gas, or other minerals; and

(d) The term "person" includes, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

43 U.S.C. § 1332. Congressional declaration of policy; jurisdiction; construction

(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.

(b) This subchapter shall be construed in such manner that the character as high seas of the waters above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected.

43 U.S.C. § 1333. Laws and regulations governing lands—Constitution and United States laws; laws of adjacent States; publication of projected States lines; restriction on State taxation and jurisdiction

(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: *Provided, however*, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Reg-

ister such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

Jurisdiction of United States district courts

(b) The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent State nearest the place where the cause of action arose.

Applicibility of Longshoremen's and Harbor Workers' Compensation Act; definitions

(c) With respect to disability or death of an employee resulting from any injury occurring as the result of opera-

tions described in subsection (b) of this section, compensation shall be payable under the provisions of the Longshoremen's and Harbor Workers' Compensation Act. For the purposes of the extension of the provisions of the Longshoremen's and Harbor Workers' Compensation Act under this section—

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

Applicability of National Labor Relations Act

(d) For the purposes of the National Labor Relations Act, as amended, any unfair labor practice, as defined in such Act, occurring upon any artificial island or fixed structure referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the adjacent State nearest the place of location of such island structure.

Coast Guard regulations; marking of islands and structures; offenses and penalties

(e) (1) The head of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights

and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the islands and structures referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary.

(2) The head of the Department in which the Coast Guard is operating may mark for the protection of navigation any such island or structure whenever the owner has failed suitably to mark the same in accordance with regulations issued hereunder, and the owner shall pay the cost thereof. Any person, firm, company, or corporation who shall fail or refuse to obey any of the lawful rules and regulations issued hereunder shall be guilty of a misdemeanor and shall be fined not more than $100 for each offense. Each day during which such violation shall continue shall be considered a new offense.

Prevention of obstruction to navigation by Secretary of the Army

(f) The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is extended to artificial islands and fixed structures located on the outer Continental Shelf.

Provisions as non-exclusive

(g) The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands and fixed structures referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands

and structures, acts, or offenses of any other provision of law is not intended.

State Statutes

A.S. 16.05.060

Emergency Openings and Closures

This chapter does not limit the power of the commissioner or his authorized designee, when circumstances require, to summarily open or close seasons or areas or to change weekly closed periods on fish or game by means of emergency orders. An emergency order has the force and effect of law after field announcement by the commissioner or his authorized designee. An emergency order adopted under this section is not subject to the Administrative Procedure Act.

A.S. 16.05.190

Seizure without warrant and confiscation by court

Guns, traps, nets, fishing tackle, boats, aircraft, automobiles or other vehicles, sleds, and other paraphernalia used in or in aid of a violation of this chapter, or rule or regulation of the department may be seized under a valid search, and all fish and game, or parts of fish and game, or nests or eggs of birds, taken, transported, or possessed contrary to the provisions of this chapter, or rule or regulation of the department may be seized under a valid search, and all fish and game, or parts of fish and game, or nests or eggs of birds, taken, transported, or possessed contrary to the provisions of this chapter, or rule or regulation of the department shall be seized by any person designated in § 150 of this chapter. Upon conviction

of the offender or upon judgment of the court having jurisdiction that the item was taken, transported, or possessed in violation of this chapter or rule or regulation of the department, all fish and game, or parts of them are forfeited to the state and shall be disposed of as directed by the court. If sold, the proceeds of the sale shall be transmitted to the proper state officer for deposit in the general fund. Guns, traps, nets, fishing tackle, boats, aircraft, or other vehicles, sleds, and other paraphernalia seized under the provisions of this chapter, or rule or regulation of the department, unless forfeited by order of the court, shall be returned, after completion of the case and payment of the fine, if any.

A.S. 16.05.195

Forfeiture of equipment

(a) Guns, traps, nets, fishing gear, vessels, aircraft, other motor vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this title, or regulation promulgated under this title, and all fish and game or parts of fish and game or nests or eggs of birds taken, transported or possessed contrary to the provisions of this title, or regulation promulgated under it, may be forfeited to the state

(1) upon conviction of the offender in a criminal proceeding of a violation of this title in a court of competent jurisdiction; or

(2) upon judgment of a court of competent jurisdiction in a proceeding in rem that an item specified above was

used in or in aid of a violation of this title or a regulation promulgated under it.

(b) Items specified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action.

(c) An action for forfeiture under this section may be joined with an alternative action for damages brought by the state to recover damages for the value of fish and game or parts of them or nests or eggs of birds taken, transported or possessed contrary to the provisions of this title or a regulation promulgated under it.

(d) It is no defense that the person who had the item specified in (a) of this section in possession at the time of its use and seizure has not been convicted or acquitted in a criminal proceeding resulting from or arising out of its use.

(e) No forfeiture may be made of an item subsequently sold to an innocent purchaser in good faith. The burden of proof as to whether the purchaser purchased the item innocently and in good faith shall be on the purchaser.

(f) An item forfeited under this section shall be disposed of at the discretion of the department.

A.S. 16.05.221

Boards of Fisheries and Game. (a) For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the

legislature in joint session. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

(b) For purposes of the conservation and development of the game resources of the state, there is created a Board of Game composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The appointed members shall be residents of the state, and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Game, but shall be ex officio secretary.

A.S. 16.05.920

Certain acts made unlawful. (a) Unless permitted by this chapter or by regulation made under this chapter, it is unlawful for a person to take, possess, transport, sell, offer to sell, purchase, or offer to purchase fish, game, or marine aquatic plants, or any part of fish, game or aquatic plants, or a nest or egg of fish or game.

(b) No person may knowingly disturb, injure, or destroy a notice, signboard, seal, tag, aircraft, boat, vessel, automobile, paraphernalia, equipment, building or other improvement or property of the department used in the administration or enforcement of this chapter, or a poster or notice to the public concerning the provisions of this chapter, or regulation adopted under this chapter, or a

marker indicating the boundary of an area closed to hunting, trapping, fishing or other special use under this chapter. No person may knowingly destroy, remove, tamper with, or imitate a seal or tag issued or used by the department or attached under its authority to a skin, portion, or specimen of fish or game, or other article for the purpose of identification or authentication in accordance with this chapter or a regulation adopted under this chapter.

State Regulations

5 AAC 34.005

Statistical Areas Established

(a) For the king crab fishery, there are established the following statistical areas with the following code letters:

Code Letter

A—Southeastern Alaska—Yakutat Area, comprised of the waters specified in sec. 100 of this chapter.

E—Prince William Sound Area, Comprised of the waters specified in sec. 200 of this chapter.

H—Cook Inlet Area, comprised of the waters specified in sec. 300 of this chapter.

K—Kodiak Area, comprised of the waters specified in sec. 400 of this chapter.

M—Alaska Peninsula Area, comprised of the waters specified in sec. 500 of this chapter.

O—Dutch Harbor Area, comprised of the waters specified in sec. 600 of this chapter.

R—Adak Area, comprised of the waters specified in sec. 700 of this chapter.

S—Western Aleutians Area, comprised of the waters specified in sec. 800 of this chapter.

Q—Bering Sea Area, comprised of the waters specified in sec. 900 of this chapter.

(b) Each statistical area consists of:

(1) a registration area, comprised of all waters within the statistical area which are waters subject to the jurisdiction of the state; and

(2) an adjacent seaward biological influence zone, comprised of all waters within the statistical area which are not part of the registration area.

(c) Registration areas are areas in which the department shall apply conservation and management regulations in order to protect and maintain the king crab resources of the state.

(d) Adjacent seaward biological influence zones are areas which the department shall utilize to obtain biological and fishing effort data and other information necessary for the formulation of comprehensive and effective conservation and management regulations governing king crab resources inhabiting waters subject to the jurisdiction of the state.

Authority: A.S. 16.05.250

5 AAC 34.035

Closure of Registration Areas

(a) The commissioner shall monitor the condition of king crab stocks in all statistical areas through the use of such data and information as are practically available.

(b) When the commissioner finds that continued fishing effort would jeopardize the viability of king crab within a registration area, he shall close the registration area by emergency order.

(c) In determining whether to close a registration area, the commissioner shall consider all appropriate factors to the extent there is information available on such factors. Factors which may be considered include:

(1) the effect of overall fishing effort within the statistical area encompassing the registration area.

(2) catch per unit of effort and rate of harvest;

(3) relative abundance of king crab within the area in comparison with preseason expectations of the department;

(4) such guideline harvest levels as may be promulgated by regulation;

(5) the proportion of immature of softshell king crab being handled;

(6) general information on the condition of king crab within the area; and

(7) information pertaining to the maximum sustainable yield level of king crab within the registration area.

(d) Within five days after the closure of any registration area, the owner of any vessel registered for that area may formally request the commissioner to reopen the area. The commissioner shall personally review pertinent information on the condition of king crab within the area, and shall formally announce his decision within 14 days of the receipt of the request.

(e) After 72 hours following the closure of any registration area, no vessel registered for that area may have king crab on board in waters subject to the jurisdiction of the state unless;

(1) the vessel is validly registered for another registration area and the season is open in the area; and

(2) the vessel is otherwise in compliance with secs. 020 and 030 of this chapter.

Authority: A.S. 16.05.060

A.S. 16.05.250(2), (3), (4), (7), (10)

5 AAC 34.600

Description Of Statistical Area

Statistical area O has as its eastern boundary the longitude of Scotch Cap light, and as its western boundary 172 degrees W. long., and its seaward boundaries the 800 fathom depth contour, excluding the waters of statistical area Q.

Authority: A.S. 16.05.250(2)

5 AAC 34.605

Description of Districts

(a) Akun district: all waters of statistical area O east of a line beginning at 54 degrees 36 minutes N. lat. (the northern boundary of king crab registration area O), 165 degrees 31 minutes 30 seconds W. long., to Billings Head light at 54 degrees 18 minutes N. lat., 165 degrees 31 minutes 30 seconds W. long., then to Jackass Point at 54 degrees 06 minutes 35 seconds N. lat., 165 degrees 34 minutes W. long., then to Avatanak Point at 54 degrees 04 minutes 30 seconds N. lat., 165 degrees 17 minutes W. long., and east of 165 degrees 17 minutes W. long.;

(b) Akutan district: all Bering Sea waters of statistical area O west of the longitude of Billings Head light (165 degrees 31 minutes 30 seconds W. long.), east of the longitude of Koriga Point on Unalaska Island (166 degrees 59 minutes 50 seconds W. long.), and north of a line from Erkine Point on Unalaska Island to Jackass Point on Akun Island;

(c) Egg Island district: all Pacific Ocean waters of statistical area O east of the longitude of Udagak Strait on Unalaska Island (166 degrees 15 minutes W. long.), south of a line from Erskine Point on Unalaska Island (53 degrees 59 minutes N. lat., 166 degrees 16 minutes 45 seconds W. long.) to Jackass Point on Akun Island (54 degrees 06 minutes 35 seconds N. lat., 165 degrees 34 minutes W. long.) then to Avatanak Point (54 degrees 02 minutes 30 seconds N. lat., 165 degrees 17 minutes W. long.), and west of the longitude of Avatanak Point (165 degrees 17

minutes W. long.) including the waters of Beaver Inlet and Udagak Strait;

(d) Unalaska district: all Bering Sea waters of statistical area O west of the longitude of Koriga Point on Unalaska Island (166 degrees 59 minutes 50 seconds W. long.), east of Cape Tanak on Umnak Island (168 degrees W. long.), and north of a line from Kettle Cape on Umnak Island (53 degrees 16 minutes 40 seconds N. lat., 168 degrees 07 minutes W. long.), to Konets Head on Unalaska Island (53 degrees 19 minutes N. lat., 176 degrees 51 minutes W. long.);

(e) Western district: all Bering Sea waters of statistical area O west of the longitude of Cape Tanak on Unalaska Island and all Pacific Ocean waters of king crab registration area O west of the longitude of Udagak Strait (166 degrees 16 minutes W. long.), and south of a line from Kettle Cape on Umnak Island (53 degrees 16 minutes 40 seconds N. lat., 168 degrees 07 minutes W. long.) to Konets Head (53 degrees 19 minutes N. lat., 167 degrees 51 minutes W. long.) on Unalaska Island, excluding the waters of Udagak Strait and Beaver Inlet.

Authority: A.S. 16.05.250(2)

5 AAC 34.610

Fishing Seasons

King crab may be taken or possessed from 12:00 noon November 1 through February 15 unless the registration area is closed earlier by emergency order.

Authority: A.S. 16.05.060
A.S. 16.05.250(2).

5 AAC 36.040

Transportation And Possession of Shrimp, Scallops And King, Dungeness Or Tanner Crabs.

It is unlawful to possess, sell, offer to sell, barter, offer to barter, give or transport, purchase or offer to purchase within the state, including the waters of the state any shrimp, scallops and king, dungeness, or tanner crab taken contrary to or in violation of the rules and regulations promulgated by the board, if said shrimp, scallops or crabs are taken in any waters seaward of that officially designated as the territorial waters of Alaska to a depth of 200 meters, or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of these shrimp, scallops or crabs and for the Kodiak and Cook Inlet areas if said shrimp, scallops or crabs are taken in the following waters:

(1) in the Kodiak area, an area bounded by a line beginning at the southern entrance of Imuya Bay near Kilokak Rocks to a point southwest of Chirikof Island at 55° 31′ N. lat., 156° 20′ W. long., then east to a point at 55° 31′ N. lat., 151° 05′ W. long., then northeast to a point east of the Barren Islands 58° 52′ N. lat., 148° W. long., then west to Cape Douglas at 58° N. lat., 153° 15′ 30″ W. long.;

(2) in the Cook Inlet area, an area bounded by a line beginning at Cape Douglas at 58° 52′ N. lat., 153° 15′ 30″ W. long., then east to a point at 58° 52′ N. lat., 148° 50′ W. long., then north to Cape Fairfield on the mainland of Alaska.

Authority: A.S. 16.05.250(2)
A.S. 16.10.200

Rules

Rule 37, Alaska Rules of Criminal Procedure

Rule 37. Search and Seizure.

(a) Search Warrant—Issuance and Contents.

(1) A search warrant authorized by law shall issue only on

(i) (aa) affidavit sworn to before a judge or magistrate or any person authorized to take oaths under the law of the state, or

(bb) sworn testimony taken on the record in court, and

(ii) establishing the grounds for issuing the warrant.

(2) If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant

(i) identifying the property, and

(ii) naming or describing the person or place to be searched.

(3) The warrant

(i) shall be directed to a peace officer of the state authorized to enforce or assist in enforcing any law thereof, and

(ii) shall state the ground or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof, and

(iii) shall command the officer to search forthwith the person or place named for the property specified, and

(iv) shall direct that it be served between 7:00 a.m. and 10:00 p.m., but if an affiant is positive that the prop-

erty is on the person or in the place to be searched, the warrant may direct that it be served at any time, and

(v) shall designate the judge or the magistrate to whom it shall be returned.

(b) Execution and Return With Inventory. The warrant shall be executed and returned within 10 days after its date. The officer taking property under the warrant

(1) shall give to the person from whom or from whose premises the property was taken a copy of the warrant, a copy of the supporting affidavits, and receipt for the property taken, or

(2) shall leave the copies and the receipt at the place from which the property was taken.

The return shall be made promptly and shall be accompanied by a written inventory of any property taken as a result of the search pursuant to or in conjunction with the warrant. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be signed by the officer under the penalty of perjury pursuant to A.S. 09.65.012. The judge or magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(c) Motion for Return of Property and to Suppress Evidence

A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized.

(d) In Camera Hearing. A person who challenges the validity of a search and seizure predicated on information gained from an informant used either in

(1) support of an application for a warrant, or

(2) as the basis of a search without warrant

may move the court for disclosure of the identity of the informant pursuant to Rule 16. In the event the court determines that disclosure of the identity of the informant is not required under Rule 16, the court shall conduct an in camera recorded hearing in which it shall investigate and take evidence so as to determine whether or not a search based on the informant's information was justified. Following the in camera hearing, the court shall grant or deny the motion to suppress on the record, and shall make written findings concerning the validity of the search based on the informer's information. The written findings, together with the record of the hearing, shall be sealed, and if the validity of the search is upheld the sealed testimony and findings shall, on appeal of a conviction in which evidence of the search was admitted, be transmitted to the supreme court for automatic review of the motion to suppress. (Amended by Chapter 17 SLA 1969 effective June 25, 1969 and by Supreme Court Order 157 effective February 15, 1973)